

ASSET PURCHASE AGREEMENT

BY AND AMONG

DAUGHTERS OF CHARITY HEALTH SYSTEM,

O'CONNOR HOSPITAL,

SAINT LOUISE REGIONAL HOSPITAL,

ST. FRANCIS MEDICAL CENTER,

ST. VINCENT MEDICAL CENTER,

SETON MEDICAL CENTER,

CARITAS BUSINESS SERVICES,

ST. VINCENT DIALYSIS CENTER, INC.

DCHS MEDICAL FOUNDATION

AND

STRATEGIC GLOBAL MANAGEMENT, INC.<sup>1</sup>

Dated as of October [ ], 2014

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<sup>1</sup> Note to SGM: St. Vincent De Paul Ethics Corporation does not have any assets, as such, it is not listed as a party (*i.e.*, it is not selling anything).

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## LIST OF EXHIBITS

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A	Holdback Escrow Agreement
B	Deposit Escrow Agreement
C	Bill of Sale
D	Real Estate Assignments
E	Assignment and Assumption of Personal Property Leases
F	Commitment Letter

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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is made and entered into as of the [DAY] day of [MONTH], 2014 (the “Effective Date”) by and among Daughters of Charity Health System, a California nonprofit religious corporation (“DCHS”), O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center and Seton Medical Center, each a California nonprofit religious corporation (each, a “Hospital” and collectively the “Hospitals”) and Caritas Business Services, a California corporation (“CBS”), St. Vincent Dialysis Center, Inc. a California corporation (“St. Vincent Dialysis”), and the DCHS Medical Foundation, a California nonprofit corporation (“DCHS Medical Foundation”) (DCHS and together with the Hospitals, CBS, St. Vincent Dialysis and the DCHS Medical Foundation, collectively the “Sellers”) and Strategic Global Management, Inc. or its assignee, a California corporation (“Purchaser”). Sellers and Purchaser are sometimes referred to in this Agreement collectively as the “Parties” or individually as a “Party.”

### RECITALS

**WHEREAS**, DCHS is the sole corporate member of various Affiliates that, together with DCHS, own and operate the Business, and together own or control the rights, titles and assets comprising the Business.

**WHEREAS**, the Sellers have determined that it is in the best interest of DCHS to consider strategic alternatives for the ownership and operation of the Business, including the sale of the Transferred Assets to a qualified and experienced hospital operating company that will continue to operate the Hospitals.

**WHEREAS**, Purchaser desires to purchase from Sellers and Sellers desire to sell to Purchaser, at the Closing, the Transferred Assets, for the consideration, upon the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

### ARTICLE I.

#### DEFINITIONS; CERTAIN RULES OF CONSTRUCTION

**Section 1.01. Definitions.** In addition to the other terms defined throughout this Agreement, the following terms shall have the following meanings when used in this Agreement:

“2005 Bonds” means the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005A outstanding in the principal amount as of July 30, 2014 of Two Hundred Fifty-Six Million One Hundred Seventy Thousand Dollars (\$256,170,000) and the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System – St. Francis Medical Center) Series 2005F, 2005G and 2005H outstanding in the principal amount as of July 30, 2014 of Twenty-Eight

Million Three Hundred Five Thousand Dollars (\$28,305,000), secured by Obligations Nos. 8, 10 and 11 issued under the Master Indenture and by the Deeds of Trust.

“2014 Bonds” means the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) 2014 Series A, B and C outstanding in the principal amount of One Hundred Twenty-Five Million Dollars (\$125,000,000), secured by Obligations 13, 14 and 15 insured under the Master Indenture.

“Action” means any claim, controversy, action, cause of action, suit, litigation, inquiry, arbitration, investigation, opposition, interference, audit (including, without limitation, any audit initiated by the Centers for Medicare & Medicaid Services, such as those initiated by a Recovery Audit Contractor or similar audits), assessment, hearing, complaint, demand or other legal proceeding (whether sounding in contract, tort or otherwise, whether civil or criminal and whether brought at law or in equity) that is commenced, brought, conducted, tried or heard by or before, or otherwise involves, any Governmental Authority.

“Actual Fraud” means intentional conduct constituting actual fraud as defined in accordance with the laws of the State of California (and not as the result of any claim based upon the theory or doctrine of any Health Care Laws, including without limitation, any federal and state fraud and abuse laws, self-referral laws or false claims acts).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such specified Person. For purposes of the foregoing, a Person shall be deemed to control a specified Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of management policies of such Person, *provided* that, with respect to DCHS and Purchaser, “*Affiliate*” shall not include officers or directors of DCHS or Purchaser.

“AG Approval” has the meaning given in Section 5.15 of this Agreement.

“Agreement” has the meaning given in the preamble of this Agreement.

“Ancillary Agreements” means the Deposit and Holdback Escrow Agreements and each of the agreements, certificates, instruments and documents to be executed and delivered by the Parties in connection with the Contemplated Transactions as set forth on Schedule 1.01(b).

“Ancillary Businesses” means, collectively, Marillac Insurance Company, Ltd. and DePaul Ventures, LLC.

“Antitrust Filings” has the meaning given in Section 7.01(b)(i) of this Agreement.

“Antitrust Laws” has the meaning given in Section 5.15 of this Agreement.

“Application” has the meaning given in Section 7.01(a) of this Agreement.

“Asset Due Date” has the meaning given in Section 13.01(b) of this Agreement.

“Assumed Liabilities” has the meaning given in Section 3.01 of this Agreement.

“Balance Sheet” has the meaning given in Section 3.01 of this Agreement.

“Bill of Sale” has the meaning given in Section 4.10(a) of this Agreement.

“Bonds” means the 2005 Bonds and the 2014 Bonds.

“Building Signs” has the meaning given in Section 8.11(b) of this Agreement.

“Business” means the businesses as conducted by DCHS and Sellers as of the Effective Date, including without limitation the assets and operations of the Hospitals, the DCHS Medical Foundation and the Ancillary Businesses.

“Business Day” means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of California.

“Cash Purchase Price” has the meaning given in ~~Section 4.01~~Section 4.02 of this Agreement.

“CBS” has the meaning given in the Preamble of this Agreement.

“CEO” has the meaning given in Section 1.02(d) of this Agreement.

“CFO” has the meaning given in Section 1.02(d) of this Agreement.

“Church Approvals” has the meaning given in Section 9.07 of this Agreement.

“Church Law” has the meaning given in Section 9.07 of this Agreement.

“Closing” has the meaning given in Section 4.09 of this Agreement.

“Closing Date” means the date on which the Closing actually occurs.

“Closing Balance Sheet” has the meaning given in Section 4.06 of this Agreement.

“Closing of Financials” has the meaning given in Section 13.04 of this Agreement.

“Closing Statement” has the meaning given in Section 4.06 of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreements” means the collective bargaining agreements and other labor union contracts listed on Schedule 1.01(c), including any expired collective bargaining agreement with respect to which a duty to bargain still exists.

“Commitment Letter” has the meaning given in Section 6.11 of this Agreement.

“Confidential Information” has the meaning given in Section 7.07 of this Agreement.

“Confidentiality Agreement” means that certain Confidentiality Agreement, by and between Daughters of Charity Health System and Purchaser, dated as of February 12, 2014.

“Contemplated Transactions” means the transactions contemplated by this Agreement, including (a) the purchase and sale of the Transferred Assets; and (b) the execution, delivery and performance of the Ancillary Agreements.

“Contracts” has the meaning given in Section 2.01(t) of this Agreement.

“Cost Reports” means all cost and other reports filed by Purchaser for payment and/or reimbursement from Government Payment Programs and other payors.

“Costs” has the meaning given in Section 7.06 of this Agreement.

“CBS Operations” means all of the business and operations conducted by CBS.

“Damages” has the meaning given in Section 14.01 of this Agreement.

“DCHS” means the legal entity described in the preamble of this Agreement.

“DCHS Executives” means those individuals set forth on Schedule 1.01(a).

“DCHS Marks” has the meaning given in Section 2.02(c) of this Agreement.

“DCHS Medical Foundation” means that certain nonprofit religious corporation operating as a medical foundation pursuant to California Health & Safety Code Section 1206(l) whose name is DCHS Medical Foundation.

“DCHS Medical Foundation President” means Ernie Wallerstein as of the Effective Date, as listed on Schedule 1.01(a).

“DCHS Names” has the meaning given in Section 2.02(c) of this Agreement.

“Deeds of Trust” means each Deed of Trust with Fixture Filing and Security Agreement dated as of December 1, 2001 granted by a Member of the DCHS Obligated Group to the Master Trustee under the Master Indenture.

“Defined Benefit Church Plan” means the Daughters of Charity Health System Retirement Plan, which has been consistently treated and administered by DCHS as a non-electing “church plan” as defined in Section 3(33) of ERISA and Section 414(e) of the Code.

“Defined Contribution Church Plans” means the Daughters of Charity Health System Retirement Plan Account, the Daughters of Charity Health System Supplemental Retirement Plan (401(a)) and the Daughters of Charity Health System Supplemental Retirement Plan (TSA/403(b)), and any other defined contribution plan that is listed on Schedule 1.01(d) (whether or not frozen), each of which has been consistently treated and administered by DCHS as a non-electing “church plan” as defined in Section 3(33) of ERISA and Section 414(e) of the Code.

“Deposit Escrow Agreement” has the meaning given in Section 4.07 of this Agreement.

“Disclosure Schedules” means those schedules attached to this Agreement and referred to in one or more sections or subsections of this Agreement.

“DOCMSC” means the Daughters of Charity Ministry Services Corp.

“DOCMSC Lease” has the meaning given in Section 13.05 of this Agreement.

“DPH Approvals” has the meaning given in Section 7.01(b) of this Agreement.

“DSH Payments” means all disproportionate share replacement payments from any Government Payment Program including Medi-Cal and Medicare.

“D&O Insurance” has the meaning given in Section 7.11 of this Agreement.

“Effective Date” has the meaning given in the preamble of this Agreement.

“Employee Pension Benefit Plan” has the meaning set forth in Section 3(2) of ERISA.

“Employee Welfare Benefit Plan” has the meaning set forth in Section 3(1) of ERISA.

“Encumbrance” means any mortgage, deed of trust, pledge, assessment, security interest, lease, sublease, lien (including mechanic’s or materialmen’s liens and judgment liens), levy, right of way, easement, covenant, charge or other encumbrance of any kind, whether imposed by contract, law, equity or otherwise.

“Environmental Law” means all federal, state, or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, relating to the protection of human health, safety and environment.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Excluded Liabilities” has the meaning given in Section 3.02 of this Agreement.

“Expiration Date” has the meaning given in Section 13.06 of this Agreement.

“Fiduciary Liability Insurance” has the meaning given in Section 7.12 of this Agreement.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Good Faith Deposit” has the meaning given in Section 4.07 of this Agreement.

“Government Order” means any order, writ, judgment, injunction, decree, stipulation, restriction, ruling, decision, verdict, determination or award made, issued or entered by or with any Governmental Authority.

“Government Payment Programs” means the federal Medicare program, TRICARE, the State of California Medi-Cal program, and similar or successor health care payment programs with or for the benefit of Governmental Authorities.

“Governmental Approval” has the meaning given in Section 5.15 of this Agreement.

“Governmental Authorities” means any and all agencies, authorities, bodies, boards, bureaus, commissions, courts, departments, directorates, instrumentalities, legislatures, officials, tribunals and offices of any nature whatsoever of any United States federal, state, or local government unit or political subdivision and any self-regulatory organization.

“Hazardous Materials” means any (i) toxic or hazardous materials or substances, including mold; (ii) solid wastes, including asbestos, polychlorinated biphenyls, mercury, chemicals, flammable or explosive materials; (iii) radioactive materials (including naturally-occurring radioactive materials); (iv) petroleum or petroleum products (including crude oil); (v) medical waste; and (vi) any other chemical, pollutant, contaminant, substance or waste that is regulated by any Governmental Authority under any Environmental Laws.

“Health Care Laws” means any and all Legal Requirements of any Governmental Authorities pertaining to health regulatory matters and reimbursement for healthcare services including, without limitation, (a) fraud and abuse (including without limitation the following statutes, as amended, modified or supplemented from time to time and any successor statutes thereto and regulations promulgated from time to time thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)); the civil False Claims Act (31 U.S.C. § 3729 et seq.); Sections 1320a-7, 1320a-7a and 1320a-7b of Title 42 of the United States Code; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)); (b) Medicare, Medicaid, TRICARE or other governmental health care or payment program; (c) the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et. seq.; (d) quality, safety certification and accreditation standards and requirements; (e) the billing, coding or submission of claims or collection of accounts receivable or refund of overpayments; (f) all Legal Requirements concerning the privacy and/or security of personal data of or concerning an individual; (g) Legal Requirements regulating data mining; and (h) any other Legal Requirement or regulation of any Governmental Authority which regulates kickbacks, patient or Government Payment Programs, Government Payment Program claims processing, medical record documentation requirements, the hiring of employees or acquisition of services or products from those who have been excluded from governmental health care programs, licensure, accreditation or any other aspect of providing health care applicable to the operations of Sellers.

“Hired Employee” has the meaning given in Section 8.02(b) of this Agreement.

“Historical Financial Statements” has the meaning given in Section 5.10 of this Agreement.

“HITECH Payments” means any Health Information Technology for Economic and Clinical Health payments made by Medicare and Medicaid to Purchaser after the Closing Date with respect to meaningful use of electronic health records at the Hospitals.

“Holdback Amount” has the meaning given in Section 4.03 of this Agreement.

“Holdback Escrow Agreement” has the meaning given in Section 4.03 of this Agreement.

“Hospital Employees” has the meaning given in Section 5.13(a) of this Agreement.

“Hospitals” has the meaning given in the preamble of this Agreement.

“Hospital CEOs” means Gerald Kozai, Catherine Fickes, James Dover and Joanne Allen as of the Effective Date and listed on Schedule 1.01(a).

“HSR Act” has the meaning given in Section 5.15 of this Agreement.

“Indemnified Party” has the meaning given in Section 14.05(a) of this Agreement.

“Indemnifying Party” has the meaning given in Section 14.05(a) of this Agreement.

“Intellectual Property” has the meaning given in Section 2.01(n) of this Agreement.

“Interim Financial Statements” has the meaning given in Section 7.04(f) of this Agreement.

“Inventory” has the meaning given in Section 2.01(f) of this Agreement.

“Leased Real Property” has the meaning given in Section 2.01(c) of this Agreement.

“Leases” has the meaning given in Section 2.01(e) of this Agreement.

“Legal Requirements” means, with respect to any Person, all constitutional provisions, statutes, laws, ordinances, bylaws, codes, rules, regulations, restrictions, Government Orders, judgments, orders, writs, permits, Licenses, injunctions, decrees, determinations, resolutions, rulings, promulgations, policies, interpretations, contractual obligations, awards or any similar provision having the force or effect of law of, or any guideline adopted or issued by, any Governmental Authority having jurisdiction over such Person or any of such Person’s assets or businesses.

“Licenses” has the meaning given in Section 2.01(n) of this Agreement.

“Local 39 Pension Plan” means the Stationary Engineers Local 39 Pension Plan.

“Management and Other Employees” has the meaning given in Section 8.02 of this Agreement.

“Master Indenture” means the Master Indenture of Trust dated as of December 1, 2001 among the Members of the DCHS Obligated Group and the Master Trustee, as amended and supplemented.

“Master Trustee” means U.S. Bank Trust National Association.

“Material Adverse Effect” means any event, change, fact, condition, circumstance or occurrence that, individually or in the aggregate with other events, changes, facts, conditions, circumstances, or occurrences, has had or would reasonably be likely to result in a material adverse effect on (i) the Transferred Assets, taken as a whole, (ii) the Assumed Liabilities, taken as a whole, (iii) the Business, taken as a whole, or (iv) the ability of Sellers to perform its material obligations under this Agreement; provided, however, that none of the following (or the results thereof) shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (a) events, changes, facts, conditions, circumstances or occurrences generally affecting the health care industry; (b) events,



changes, facts, conditions, circumstances or occurrences generally affecting the United States of America or world economy or the debt, credit or securities markets of the United States of America or world (including any decline in the price of any security or any market index) or the market or geographical area in which the Hospitals are located; (c) any outbreak or escalation of hostilities or declared or undeclared acts of war or terrorism; (d) changes or proposed changes in Legal Requirements or the interpretation thereof by a Governmental Authority; (e) changes or proposed changes in GAAP or other accounting requirements or principles (or interpretations thereof); (f) events, changes, facts, conditions, circumstances or occurrences resulting from actions taken by Sellers which actions Purchaser has requested or to which Purchaser has consented; (g) any event, change, fact, condition, circumstance or occurrence resulting from any actions taken by Purchaser or its Affiliates other than as contemplated by this Agreement; (h) any failure of Sellers to meet projections, forecasts or revenue or earning predictions for any period; (i) any strike or work stoppage or slowdown arising in connection with the activities contemplated by Section 7.06; (j) events, changes, facts, conditions, circumstances or occurrences resulting from the announcement or execution or the existence of, or compliance with, this Agreement and the Contemplated Transactions; (k) submission of applications for rights in Intellectual Property or (l) the assignment, transfer, conveyance or distributed contemplated by Section 2.02 of this Agreement.<sup>2</sup>

"Measure A" means that certain tax measure for the County of San Mateo known as Measure A, as approved by the voters of San Mateo in November 2012.

"Measure A Agreement" means that certain Agreement among Seton Medical Center, the County of San Mateo, and San Mateo Health Commission dba the Health Plan of San Mateo pursuant to which the County of San Mateo agreed to provide financial support to Seton Medical Center based on Measure A funds, on certain stated conditions, as amended.

"Member of the DCHS Obligated Group" means each of DCHS, O'Connor Hospital, Saint Louise Regional Hospital, Seton Medical Center, St. Francis Medical Center and St. Vincent Medical Center.

"Multiemployer Plan" or "Multiemployer Plans" means one or both of the Local 39 Pension Plan and the RPHE.

"Ordinary Course of Business" means the ordinary course of the operation of the Hospitals and Business, as applicable, consistent with the past customs and practices of Sellers; provided that, that if Sellers take an action in order to comply with any Legal Requirement, such action shall be deemed to have been taken by Sellers in the Ordinary Course of Business.

"Outside Date" has the meaning set forth in Section 11.01(d)(i) of this Agreement.

"Owned Real Property" has the meaning given in Section 2.01(a) of this Agreement.

"Parties" has the meaning given in the preamble of this Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation.

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<sup>2</sup> To add RIF language if appropriate.

“Permitted Exceptions” means and includes any: (i) any Real Property Leases or Personal Property Leases, (ii) Encumbrances existing on the date hereof which will be discharged at Closing, including the 2005 Bonds and 2014 Bonds, (iii) Encumbrances incurred and pledges and deposits made in the Ordinary Course of Business in connection with obligations for workers’ compensation, unemployment insurance, old-age pensions and other social security benefits, (iv) Encumbrance for Taxes or other governmental charges or assessments not yet due and payable as of the Closing Date, or being contested in good faith, (v) Encumbrance of any landlord, carrier, warehouseman, workmen, repairmen, mechanic or materialman and other like encumbrance arising in the Ordinary Course of Business, or deposits to obtain the release of such Encumbrances, (vi) Encumbrances for which either title insurance coverage or bonding reasonably satisfactory to Purchaser has been obtained, (vii) standard printed exceptions customarily set forth in title reports or title policies, (viii) zoning restrictions, recorded easements, licenses, rights of way, declarations, reservations, provision, covenants, conditions, waivers, restrictions on the use of property, or other Encumbrances that, individually or in the aggregate, do not materially impair the use of Real Property in the operation of the Business of Sellers as currently operated, (ix) such imperfections in titles that, individually or in the aggregate, do not materially impair the use of Real Property in the operation of the Business of Sellers as currently operated, (x) Legal Requirements regulating the use or enjoyment of the applicable property, (xi) restrictions on transfer of securities imposed by any applicable Law; (xii) Encumbrances created, suffered or approved by or through Purchaser; (xiii) Encumbrances or other rights of any third party with respect to any Intellectual Property; (xiv) Encumbrances and other matters set forth or referenced on or in any one or more of the Title Documents; and (xv) extensions, renewals, and replacements of Encumbrances referred to in (i) through (xiv) of this sentence.

“Permitted Names” has the meaning given in Section 8.11 of this Agreement.

“Person” means any individual or any corporation, association, partnership, limited liability company, joint venture, joint stock or other company, business trust, trust, organization, Governmental Authority or other entity of any kind.

“Personal Property” has the meaning given in Section 2.01(f) of this Agreement.

“Personal Property Leases” has the meaning given in Section 2.01(e) of this Agreement.

“Post-Closing CFO” has the meaning given in Section 13.04 of this Agreement.

“Post-Closing Representation” has the meaning given in Section 15.13 of this Agreement.

“Pre-Closing Representation” has the meaning given in Section 15.13 of this Agreement.

“Prepaid Expenses” has the meaning given in Section 2.01(h) of this Agreement.

“Prior Company Counsel” has the meaning given in Section 2.02(h) of this Agreement.

“Privacy Laws” has the meaning given in Section 13.02 of this Agreement.

“Proposal Notice” has the meaning given in Section 13.06 of this Agreement

“Proposed RIF” has the meaning given in ~~Section 4.05~~[Error! Reference source not found.](#) of this Agreement.

“Purchase Price” has the meaning given in Section 4.01 of this Agreement.

“Purchaser” has the meaning given in the preamble of this Agreement.

“Purchaser Indemnified Parties” has the meaning given in Section 14.01 of this Agreement.

“QA Payments” means any quality assurance and supplemental Medi-Cal payments made by the California Department of Health Care Services to Purchaser as licensee of the Hospitals at the time of payment pursuant to as reflected in Section 14167 et seq. or Section 14169 et seq. of the California Welfare and Institutions Code including without limitation payments made under the new QAF Program, enacted pursuant to California SB 239 (2013) and codified as the Medi-Cal Hospital Reimbursement Improvement Act of 2013 at Section 14169.50 et seq. of the California Welfare & Institutions Code, or any predecessor or follow-on or successor quality assurance programs.

“Real Estate Assignments” has the meaning given in Section 4.10(b) of this Agreement.

“Real Property” has the meaning given in Section 2.01(c) of this Agreement.

“Real Property Leases” has the meaning given in Section 2.01(d) of this Agreement.

“Real Property (Tenant) Leases” has the meaning given in Section 2.01(c) of this Agreement.

“Records” means all files, data, documents, records, correspondence, work papers, operating manuals and other documents including without limitation Hospital Employee records, financial records, equipment records, construction plans and specifications, patient records, medical records and medical and administrative libraries, medical staff, peer review and physician credentialing records and files, and on-site regulatory compliance records, including in each case electronically stored files, data, documents and records.

“Referral Laws” means Section 1128B(b) of the Social Security Act, as amended, 42 USC Section 1320a 7(b) (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute,” Section 1877 of the Social Security Act, as amended, 42 USC Section 1395nn and related regulations (Prohibition Against Certain Referrals), commonly referred to as “Stark Law”, 42 USC Section 1320a-7a(a)(5), California Business and Professions Code Sections 650, 650.01 and 650.02, California Labor Code Sections 139.3, 139.31 and 3215, California Insurance Code Section 754, California Welfare and Institutions Code Section 14107.2 and California Health and Safety Code Section 445,

“Related Marks” has the meaning given in Section 2.02(c) of this Agreement.

“Related Names” has the meaning given in Section 2.02(c) of this Agreement.

“Released Parties” has the meaning given in Section 4.10(d) of this Agreement.

“Restricted Cash” means assets permanently restricted by donors, which Sellers represent consists of, in the aggregate, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as of the Effective Date.<sup>3</sup>

“Restricted Names” has the meaning given in Section 8.11 of this Agreement.

“Retained Asset Due Date” has the meaning given in Section 13.01(a) of this Agreement.

“Retained Assets” has the meaning given in Section 2.02 of this Agreement.

“Retained Marks” has the meaning given in Section 2.02(c) of this Agreement.

“Retained Records” means all Records relating to the Retained Assets.

“Right of First Refusal” has the meaning given in Section 13.06 of this Agreement.

“RPHE” means the Retirement Plan for Hospital Employees, as Amended and Restated Effective January 1, 2006.

“Schedule Supplement” has the meaning given in Section 7.10 of this Agreement.

“Section 1542” has the meaning given in Section 4.12(c) of this Agreement.

“SRDP Matter” means the Medicare overpayment matter submitted to CMS by Seton Medical Center setting forth its initial disclosure pursuant to the Voluntary Self-Referral Disclosure Protocol (SRDP), September 16, 2013.

“Seller Pre-Closing Communications” has the meaning given in Section 15.13 of this Agreement.

“Seller Losses” has the meaning given in Section 14.03.

“Sellers” has the meaning given in the preamble of this Agreement.

“Sellers Accounts Receivable” has the meaning given in Section 2.01(i) of this Agreement.

“Sellers’ Plans” has the meaning given in Section 5.12(a) of this Agreement.

“Senior Leaders” means the DCHS Executives, Hospital CEOs, the DCHS Medical Foundation President and Chief Medical Officer and the Caritas Business Services’ Senior Directors, all as set forth and listed on Schedule 1.01(a).

“Severance Reserve” has the meaning given in Section 4.03 of this Agreement.

“Similar Provision” has the meaning given in Section 4.12(c) of this Agreement.

“Software” has the meaning given in Section 2.01(o) of this Agreement.

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<sup>3</sup> Note to SGM: We are still looking into the estimated amount of restricted cash.

“Surveys” has the meaning given in Section 5.07 of this Agreement.

“System Office Employees” has the meaning given in Section 8.02(d).

“Tax” means any and all foreign or United States federal, state, or local income, gross receipts, License, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, tax on unrelated business income, alternative or add-on minimum, estimated, or other tax of any kind including any interest, penalty, or addition thereto.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third Party Claims” has the meaning given in Section 14.05(a) of this Agreement.

“Title Commitments” has the meaning given in Section 5.07 of this Agreement.

“Title Company” means Chicago Title Company.

“Title Documents” has the meaning given in Section 5.07 of this Agreement.

“Title Policy” has the meaning given in Section 10.05 of this Agreement.

“Transfer Taxes” has the meaning given in Section 4.07 of this Agreement.

“Transferred Assets” has the meaning given in Section 2.01 of this Agreement.

“Transferred Intellectual Property” has the meaning given in Section 2.01(o) of this Agreement.

“Transferred Marks” has the meaning given in Section 8.11 of this Agreement.

“Transferred Records” has the meaning given in Section 2.01(m) of this Agreement.

“Transition Period” has the meaning given in Section 8.11(b) of this Agreement.

“Underlying Title Documents” has the meaning given in Section 5.07 of this Agreement.

“WARN Act” has the meaning given in Section 8.02(e) of this Agreement.

**Section 1.02. Certain Matters of Construction.**

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of

proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

(b) Section and subsection headings contained in this Agreement are not to be considered part of this Agreement, are included solely for convenience, are not intended to be full or accurate descriptions of the content of the sections or subsections of this Agreement and shall not affect the construction of this Agreement.

(c) Except as otherwise explicitly specified to the contrary in this Agreement, (i) the words “hereof,” “herein,” “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement and reference to a particular section of this Agreement shall include all subsections thereof; (ii) references to a section, Disclosure Schedule, other schedule, or annex means a section of, or Disclosure Schedule, other schedule, or annex to this Agreement, unless another agreement is specified; (iii) definitions shall be equally applicable to both the singular and plural forms of the terms defined, and references to the masculine, feminine or neuter gender shall include each other gender; (iv) the word “including” means including without limitation; (v) any reference to “\$” or “dollars” means United States dollars; and (vi) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, rule or regulation, in each case as amended or otherwise modified from time to time.

(d) References in this Agreement to “Sellers’ knowledge”, “knowledge of Sellers” or words of substantially similar import, mean the actual then current knowledge of the Chief Executive Officer (“CEO”) and/or the Chief Financial Officer (“CFO”) of DCHS and each of the Hospital’s CEOs and CFOs, as of the Effective Date and the Closing after reasonable inquiry of their respective personnel who report directly to them. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

(e) References in this Agreement to “Purchaser’s knowledge”, “knowledge of Purchaser” or words of substantially similar import, mean the actual then current knowledge of CEO and/or the CFO of Purchaser as of the Closing after reasonable inquiry of their respective personnel who report directly to them. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

(f) Unless the context clearly requires otherwise, when used herein “or” shall not be exclusive (*i.e.*, “or” shall mean “and/or”).

(g) Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

## **ARTICLE II.**

### **TRANSFERRED ASSETS**

**Section 2.01. Transferred Assets.** As of the Closing Date and subject to the terms and conditions of this Agreement, Sellers agree to sell, assign, transfer, convey and deliver to

Purchaser, free and clear of all liens and encumbrances, other than the Permitted Exceptions and the Assumed Liabilities, and Purchaser agrees to purchase, acquire, receive and accept, all of the right, title and interest of Sellers in and to the Transferred Assets, the transfer of which Transferred Assets will occur on the Closing Date. “Transferred Assets” shall mean all of the rights, titles and interests of Sellers on the Closing Date (except for those expressly specified as Retained Assets) to all assets used in the operation of the Business (other than the assets of the Ancillary Businesses, whose stock is part of the Transferred Assets, and provided, however, that notwithstanding any other term in this Agreement, the only assets being sold and transferred by the DCHS Medical Foundation are its Personal Property), as specified below at Section 3.01(f), including without limitation the following:

(a) all of the real property, together with all plant, buildings, structures, installments, improvements, fixtures, betterments and additions situated thereon, identified on Schedule 2.01(a) (collectively, the “Owned Real Property”) including without limitation all of the land, improvements and rights associated with the medical office buildings included on Schedule 2.01(a) (collectively, the “Medical Office Buildings”);

(b) all construction in progress related to the Hospitals and Medical Office Buildings and recorded on the books and records of Sellers;

(c) all of the leasehold interests of each Seller, to the extent assignable or transferable by each Seller, in all real property that is leased to such Seller as lessee or tenant identified on Schedule 2.01(c) (collectively, the “Leased Real Property” and together with the Owned Real Property, the “Real Property”) pursuant to any lease, sublease, or other contractual obligation (collectively, the “Real Property (Tenant) Leases”);

(d) all of the interests of each Seller as lessor, to the extent assignable or transferable by such Seller, in and to each lease, sublease, or other contractual obligation under which the Real Property is occupied or used by a third-party exclusively with respect to the operation of the Hospitals and Medical Office Buildings (together with the Real Property (Tenant) Leases, the “Real Property Leases”).

(e) all of the interests of each Seller as lessee, to the extent assignable or transferable by such Seller, in and to each lease, sublease, License or other contractual obligation under which the Personal Property is used by such Seller exclusively with respect to the operation of the Hospitals and Medical Office Buildings identified on Schedule 2.01(e) (collectively, the “Personal Property Leases” and together with the Real Property Leases, the “Leases”);

(f) all of the tangible personal property owned, or to the extent assignable or transferable by each Seller, leased, subleased or licensed by such Seller and used exclusively with respect to the operation of the Hospitals, the CBS Operations, Medical Office Buildings and the DCHS Medical Foundation including, without limitation, equipment, furniture, fixtures, machinery, vehicles, office furnishings, and leasehold improvements, except for the tangible personal property identified on Schedule 2.01(f) (collectively, the “Personal Property”);

(g) all inventories of usable supplies, drugs, medical supplies, food, janitorial and office supplies and other disposables and consumables that are (i) owned by each Seller and (ii) on the premises of the Hospitals on the Closing Date (collectively, the “Inventory”);

(h) to the extent assumable by Purchaser, all advance payments, prepayments, prepaid expenses, and deposits (other than such payments, prepayments or deposits in respect of Taxes or prepaid insurance premiums, if any) made by each Seller with respect to the Hospitals and other Transferred Assets as of the Closing Date, as set forth on Schedule 2.01(h) (collectively the “Prepaid Expenses”);

(i) all current assets as more particularly described in the Balance Sheet and all accounts, notes, interest and other health care or other receivables generated in connection with the operation of the Hospitals and the CBS Operations and other Transferred Assets by Sellers before or on the Closing Date, whether billed or unbilled, recorded or unrecorded, or payable by a Government Payment Program, medically indigent assistance program, private payors or any other payor (including an insurance company), health care provider, independent practice association network (such as a health maintenance organization, preferred provider organization or any other managed care program), any fiscal intermediary of the foregoing, private pay patients, private insurance or any other source, including, without limitation, DSH Payments, QA Payments, HITECH Payments, notes or other amounts receivable from physicians or other parties (collectively “Sellers Accounts Receivable”).

(j) all rights, claims and choses of action of Sellers related to and/or arising out of the Sellers Accounts Receivable, and any payments, awards or other proceeds arising therefrom;

(k) all insurance proceeds arising in connection with the ownership or operation of the Transferred Assets and the Hospitals and the CBS operations before or on the Closing Date to which Purchaser is entitled pursuant to Section 4.13;

(l) all surpluses arising out of any risk pools to which any Seller is party on the Closing Date;

(m) all Records except the Retained Records (collectively, the “Transferred Records”);

(n) all of the rights of Sellers, to the extent assignable or transferable by Sellers under applicable Legal Requirements and the terms of any applicable contractual obligation and without out-of-pocket expenses to Sellers, to all licenses (including all licenses issued by or received from a Governmental Authority), provider numbers, permits, approvals, certificates of exemption, franchises, accreditations, registrations, authorizations, filings, consents, permits or approvals issued to Sellers and used by Sellers exclusively with respect to the operation of the Hospitals, together with all waivers which Sellers have of any such requirements, if any (collectively, the “Licenses”), including, without limitation, the licenses and Medicare provider numbers listed on Schedule 2.01(n);

(o) to the extent assignable or transferable by Sellers under applicable Legal Requirements without material out-of-pocket expenses to Sellers (i) all patents, patent applications, trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, and trade secrets including without limitation all Transferred Marks (subject to Section 2.02(c) and Section 8.12), excluding, in each case, the Retained Marks and any other Intellectual Property included in the Retained Assets, (collectively,



the “Intellectual Property”) and (ii) all computer software and code and licenses for computer software and code, excluding in each case any computer software or code, or any licenses or contracts included in the Retained Assets (collectively, the “Software” and together with the Intellectual Property, the “Transferred Intellectual Property”), together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any Transferred Intellectual Property accruing after the Closing Date; provided, however, that such transfer of Transferred Intellectual Property is subject to the conditions set forth in Section 8.11;

(p) all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned or licensed by Sellers and used by Sellers, as further identified on Schedule 2.01(p);

(q) all telephone numbers and facsimile numbers that are used exclusively with respect to the operation of the Business;

(r) all goodwill of Sellers evidenced by the Transferred Assets or otherwise in the Business;

(s) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date, including, without limitation, property which is subject to applicable escheat laws;

(t) all right and interest of Sellers, to the extent assignable or transferable by Sellers, in and to all contracts and agreements to which Sellers are a party, as identified on Schedule 2.01(t) (collectively, the “Contracts”);

(u) to the extent assignable or transferable by Sellers without material out-of-pocket expense to Sellers, all warranties on the Transferred Assets in favor of the Hospitals or the Business;

(v) all cash other than Restricted Cash and all cash equivalents, including, without limitation, investments in marketable securities, certificates of deposit, bank accounts, financial accounts, investment accounts, debt service reserve funds and promissory notes owned or held by, or on behalf or for the benefit, of Sellers and the Hospitals and Business on the Closing Date;

(w) all claims, rights, interests and proceeds with respect to any Tax refund or credit or other recovery (including, without limitation, refunds, credits or other receivables related to real property and personal property Taxes), together with interest thereon, with respect to taxable periods (or portions thereof) ending on or before the Closing Date, and the right to pursue appeals of same;

(x) all of the membership interests of DePaul Ventures, LLC;

(y) all of the stock of Marillac Insurance Company, Ltd.;

(z) all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to any cost reports arising out of time periods prior to or after the Closing Date.

**Section 2.02. Retained Assets.** Notwithstanding anything to the contrary in Section 2.01, Sellers shall retain all assets which are not among the Transferred Assets, including, without limitation, the following assets of Sellers (collectively, the “Retained Assets”):

(a) all Restricted Cash and all resulting cash equivalents wholly derived from or funded with Restricted Cash, including, without limitation, such restricted cash equivalents in the form of investments in marketable securities, certificates of deposit, bank accounts, financial accounts, investment accounts, debt service reserve funds and promissory notes owned or held by, or on behalf or for the benefit, of Sellers and the Hospitals and Business on the Closing Date;

(b) subject to Purchaser’s rights under Section 13.02, (i) the Retained Records and (ii) all procedures, marketing materials, standard operating procedures, studies, analyses and Software to the extent (A) relating to the Retained Assets or the operations of Sellers other than the operation of the Business; (B) protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or protection recognized under law; (C) proprietary to Sellers; or (D) Sellers are required to retain such by law;

(c) all trademarks, domain names and website content listed on Schedule 2.02(c), and any other trademark or domain name that contains, uses or references the name “Daughters,” “Daughters of Charity,” “Daughters of Charity Health System,” “DCHS,” “DOCHS,” “DCHS Medical Foundation,” or any such similar name (the “DCHS Names”; together with any abbreviations, variations, logos or symbols associated or used in connection with the DCHS Names or Retained Assets, the “DCHS Marks”), and any trademark or domain name that contains, uses or references the name of a Person belonging to or affiliated with DCHS (the “Related Names”; together with any abbreviations, variations, logos or symbols associated or used in connection with the Related Names, the “Related Marks”). The DCHS Marks and the Related Marks are collectively, the “Retained Marks”;

(d) receivables payable in favor of DCHS by Daughters of Charity Ministry Services Corporation and any non-DCHS affiliated entities;<sup>4</sup>

(e) all assets integral to the operations of the ancillary community benefit services identified in Schedule 2.02(e);

(f) any religious artifacts, including any sacred object, and the assets and donor-restricted assets listed on Schedule 2.02(f);

(g) the Lease Agreement between Daughters of Charity of St. Vincent de Paul, Province of the West and DCHS dated October 1, 2001 for the building at 26000 Altamont Road, Los Altos Hills, CA;

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<sup>4</sup> Note to SGM: This shall only include DOCMSC, GRACE, Daughters of Charity Province of the West and the entity that operates the Meals on Wheels program. [Note to DHCS: SGM would still like to have the nature of the receivables described/explained.](#)

(h) for the avoidance of doubt, (1) all communications between or among Ropes & Gray LLP, Seyfarth, Shaw LLP, Dumas & Clark LLP or any other internal or external legal counsel ~~currently representing~~ who have been or are representing any of the Sellers or any of their respective Affiliates (each, a “Prior Company Counsel”), as listed on Schedule 2.02(h), on the one hand, and any of the Sellers or any of their Affiliates, on the other hand, that are related in any way to this Agreement or the Contemplated Transactions and (2) the attorney-client privilege and expectation of client confidence;

(i) receivables payable in favor of each of the Hospitals by such Hospital’s affiliated foundation; and<sup>5</sup>

(j) any asset or contract listed on Schedule 2.02(j).<sup>6</sup>

### ARTICLE III.

#### OBLIGATIONS AND LIABILITIES

**Section 3.01. Assumed Liabilities.** At the Closing, except for Excluded Liabilities, the Purchaser shall, assume and agree to pay, perform and discharge when due any and all liabilities and obligations of any kind or nature whatsoever of DCHS and, to the extent related to the Business or the Transferred Assets, its Affiliates (expressly excepting and excluding in all cases the DCHS Medical Foundation and the Ancillary Businesses and their liabilities and obligations, which shall be retained by such entities), whether known or unknown, absolute, accrued, contingent or otherwise (collectively, the “Assumed Liabilities”). Without limiting the generality of the foregoing, Assumed Liabilities shall include any and all liabilities of Sellers (expressly excepting and excluding in all cases the DCHS Medical Foundation and the Ancillary Businesses and their liabilities and obligations, which shall be retained by such entities) related to: (i) all of the liabilities as more particularly described in the unaudited June 30, 2014 balance sheet attached hereto as Schedule 3.01(a) (the “Balance Sheet”) and those liabilities not described, reflected or included in the Balance Sheet, including any and all off-balance sheet items; (ii) Sellers’ Plans, including pension plans; (iii) Collective Bargaining Agreements; (iv) taxes, including Transfer Taxes and any unpaid real estate Taxes; and (v) government payment program liabilities, if any, including any overpayments, and the following:

(a) accounts payable;

(b) long-term debt; (except for the 2005 Bonds and 2014 Bonds debt, and any other long term debt, [which is to the extent be paid off or defeased at Closing, as addressed elsewhere in this Agreement]<sup>7</sup>);

<sup>5</sup> Note to SGM: As of 8/31/2014, the amount totaled \$27.8 million, broken down as follows: \$17.6 million – salaries, wages and benefits, \$.02 million – supplies, \$1.7 million – purchased services and \$8.3 million – other (insurance, utilities, depreciation, marketing, consulting, rentals, postage and event expenses).

<sup>6</sup> This schedule shall include (i) the property located at 25 San Fernando, Dale City, CA 94015; (ii) the property located at 253. Lake St., Los Angeles, CA 90057; and (iii) all furniture, fixtures and equipment at the Los Altos Hills corporate office (other than computer and IT equipment).

- (c) amounts due to government agencies;
- (d) accrued liabilities;
- (e) all of the health and welfare, paid time-off and retirement benefit plan liabilities of DCHS and any off-balance sheet pension liabilities of DCHS, including any liabilities arising under the Multiemployer Plans, the Defined Benefit Church Plan, the Defined Contribution Church Plans, any single-employer defined benefit plan to which the liabilities of DCHS under one or more of the Multiemployer Plans may be transferred as the result of the partition of one or more of the Multiemployer Plans<sup>8</sup>;
- (f) all of the Contracts, Personal Property Leases, and Real Property Leases, relating to the ownership and operation of the Business, including all physician service contracts and agreements and all of the Collective Bargaining Agreements with any existing unions or any Collective Bargaining Agreements under which there is a continuing duty to bargain, as described more particularly in Schedule 2.01(t), including any liabilities arising from the results of any effects bargaining with the union;
- (g) any liabilities arising out of or relating to any professional liability claim or similar third party litigation arising out of the operations of the Business (excluding the liabilities arising out of the operations of the DCHS Medical Foundation and the Ancillary Businesses) prior to the Closing;
- (h) any liabilities for violations of the Health Care Laws arising from acts or omissions at all times prior to Closing, including, without limitation, those pertaining to Medicare and Medi-Cal fraud or abuse or cost reports related to the Business;
- (i) any and all liabilities insured by Marillac Insurance Company, Ltd.; and
- (j) any and all liabilities that arise under the D&O Insurance and the Fiduciary Liability Insurance, including, but not limited to, any and all deductibles, co-pays and any other non-covered expense or financial obligation under the D&O Insurance and the Fiduciary Liability Insurance.

**Section 3.02. Excluded Liabilities.** Notwithstanding anything to the contrary in Section 3.01, Purchaser shall not assume or become responsible for the liabilities related exclusively to any of the Retained Assets (collectively, the “Excluded Liabilities”).

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<sup>7</sup> Note to DCHS: SGM doesn’t understand the conditional nature of this phrase. It is understood, and a condition of closing, that the Bonds are to be defeased, and related liens released, at Closing.

<sup>8</sup> Note to DCHS: SGM is reserving its final position on assumption of Defined Benefit Church Plan until the start of next week when its ERISA lawyer (who is unavailable due to the Jewish holiday) is available to review and advise on these issues based on further information from the call today.

## ARTICLE IV.

### CONSIDERATION; CLOSING

**Section 4.01. Consideration.** Subject to the terms and conditions of this Agreement, the aggregate consideration for the sale, conveyance assignment, transfer and delivery of the Transferred Assets shall consist of cash payments and the assumption of liabilities for an aggregate purchase price of approximately [Eight Hundred Seventy-Eight Million, Four Hundred Thousand Dollars (\$880,400,000)] (“Purchase Price”). The Purchase Price shall include (i) the Cash Purchase Price (as addressed below) and (ii) the assumption of the Assumed Liabilities.

**Section 4.02. Closing Date Payments.** At Closing, Purchaser shall deliver to Sellers the Cash Purchase Price, which shall include: (a) the Holdback Amount in accordance with Section 4.03; (b) the Severance Reserve in accordance with Section 4.04; (c) Twenty Million Dollars (\$20,000,000); (d) [an amount of up to Twenty Million Dollars (\$20,000,000) (the “RIF Payment”) in accordance with ~~Section 4.05~~Section 4.05<sup>9</sup>; and (e) an amount which shall be equal to the liabilities set forth on ~~Section 4.01~~Schedule 4.02 to include, at a minimum:

(i) the Bonds, including the 2014 Bonds in a manner and amount sufficient to redeem, prepay or defease the Bonds at Closing in full to their first optional call date in accordance with their governing documents and all fees and expenses related to the redemption, prepayment or defeasance and the establishment of the necessary escrows, the release of all security including the Deeds of Trust, the discharge of the Master Indenture and each related trust indenture to each series of Bonds, including the 2014 Bonds, and all other matters incident thereto (which payment will be net of the any bond reserve funds, which will be contributed to the defeasance payment);

(ii) the Transfer Taxes (as defined below);

(iii) the amount of any distributions from the nonqualified retirement benefit plans due under both the Daughters of Charity Health System 401(a)(17) Retirement Plan and the Daughters of Charity Health System 401(a)(17) Supplemental Retirement Plan Account as of the Closing Date to Hospital Employees entitled to benefits under such plans as set forth on Schedule 4.02(iii) to the extent not paid by DCHS prior to the Closing Date;

(iv) the accrued paid-time off of the Hospital Employees as required under California law to the extent such paid-time off is not rolled over at Closing; and

(v) the transaction costs set forth on Schedule 4.02.

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<sup>9</sup> ~~SGM to provide details and language regarding RIF payment.~~ Note to DCHS: See Section 4.05 for proposed concept for RIF adjustment – to be further discussed.

Purchaser shall have the right to use the available cash of the Sellers at Closing, other than Restricted Cash, to help pay and satisfy the foregoing obligations so long as Purchaser has in place adequate working capital to support its representation at Section 6.12.

**Section 4.03. Holdback Amount.** At Closing, Purchaser shall deposit the amount of Thirty Million Dollars (\$30,000,000) into an escrow account (collectively the “Holdback Amount”) to be held and disposed of by the escrow agent in accordance with the terms and conditions of the Holdback Escrow Agreement, substantially in the form set forth as Exhibit A (the “Holdback Escrow Agreement”).

**Section 4.04. Severance Reserve.** At Closing, Purchaser shall deposit the amount of Eleven Million Five Hundred Thousand Dollars (\$11,500,000) into an account (the “Severance Reserve”) to be held and disposed of by DCHS in accordance with this Agreement. The Severance Reserve shall be equal to the severance benefits of the Senior Leaders and the System Office Employees, including all Taxes and contingent liabilities associated with the payment of the severance benefits. The Severance Reserve shall be reduced at Closing by (i) any severance amounts paid to the Senior Leaders and System Office Employees between the Effective Date and Closing; and (ii) any amounts no longer due to Senior Leaders and System Office Employees from DCHS because they have executed employment agreements with Purchaser.

**Section 4.05. RIF Payment.** ~~[Reserved —SGM to review and provide language]~~

**Section 4.06. RIF Payment.** RIF Payment. Sellers and Purchaser shall work together diligently to support Purchaser’s effort to develop a plan (“RIF Plan”) for a proposed reduction in workforce at the Hospitals (“Proposed RIF”), subject to and upon the terms and conditions of the Collective Bargaining Agreements, DCHS policies and Legal Requirements beginning immediately upon the Effective Date. Purchaser shall, based on such support by Sellers, develop and provide to Sellers a RIF Plan as soon as reasonably possible following the Effective. If Sellers implement the Proposed RIF, in whole or in part, prior to Closing, the Purchase Price shall be subject to adjustment, up to a maximum increase in the Cash Purchase Price of up to Twenty Million Dollars (\$20,000,000) as follows :

[The Cash Purchase Price will be increased based on the following percentage reductions in the Hospitals workforce [based on hours compensated?] per month through the Closing Date

6% reduction = \$4.0 million/month

5% reduction = \$3.3 million /month

4% reduction = \$2.6 million/month

3% reduction = \$2.0 million/month

2% reduction = \$1.3 million/month

1% reduction= \$ 0.6 million/month

less than 1% reduction 0

Payments would start the date the employee terminated [normal severance would not add to the effective date/special severance might]

**Section 4.07. Closing Balance Sheet.** Not more than ~~forty-five (45)~~<sup>sixty (60)</sup> days after the Closing Date, Purchaser shall deliver to Sellers the following: (i) a consolidated balance sheet of the Hospitals as of the Closing, prepared in accordance with GAAP applied on a basis that is consistent with the preparation of the Historical Financial Statements (the “Closing Balance Sheet”); (ii) a copy of each Hospital’s trial balance as of the Closing and (iii) a consolidated income statement of the Hospitals as of the Closing, prepared in accordance with GAAP applied on a basis that is consistent with the preparation of the Historical Financial Statements (“Closing Statement”).

**Section 4.08. Good Faith Deposit.** Purchaser shall deposit a cash sum in the amount of [Fifty Million Dollars (\$50,000,000)]<sup>10</sup> (along with any earnings thereon, the “Good Faith Deposit”) into a commercially customary, mutually acceptable interest earning escrow account concurrently or within one (1) Business Day of the full execution of this Agreement. The Parties shall enter into an escrow agreement in substantially the form attached hereto as Exhibit B (the “Deposit Escrow Agreement”) and Purchaser shall make the Good Faith Deposit payments to the escrow agent designated in the Deposit Escrow Agreement. The refundability of the Deposit shall be determined pursuant to the following provisions:

(a) Notwithstanding any other term herein, Purchaser shall be entitled to the full return of the Good Faith Deposit in the event that (i) Purchaser terminates this Agreement pursuant to the terms set forth at Section 11.01(c) for Sellers’ failure to satisfy Sections 10.01, 10.02, 10.06 and 10.07 or if DCHS fails to satisfy Section 9.07, or (ii) this Agreement is terminated pursuant to Section 11.01(a).

(b) If this Agreement is terminated by Sellers pursuant to Section 11.01(b) for Purchaser’s failure to satisfy Sections 9.01, 9.02, 9.06 or 9.08 ~~or for Purchaser’s failure to satisfy Section 6.08,~~<sup>11</sup> and all other conditions to closing not in Purchaser’s control have otherwise been satisfied, then 100% of the Good Faith Deposit shall be released to Sellers, as liquidated damages as further addressed below.

(c) If this Agreement is terminated by either Party pursuant to Section 11.01(e), then Five Million Dollars (\$5,000,000) of the Good Faith Deposit is released to Sellers and Forty Five Million Dollars (\$45,000,000) (and all earnings on the Good Faith Deposit) is released to Purchaser. If the Agreement is terminated by either Party pursuant to Section 11.01(d), then Five Million Dollars (\$5,000,000) of the Good Faith Deposit is released to Sellers and Forty Five Million Dollars (\$45,000,000) (and all earnings on the Good Faith Deposit) is released to Purchaser.

<sup>10</sup> Note to DCHS: Timing of Deposit (one vs. two installments) remains an open issue pending resolution of pension analysis.

<sup>11</sup> Note to DCHS: We deleted the separate reference to a breach of the Section 6.08 representation because it is already covered by the termination right granted to Sellers per Section 11.01(b) based on failure of Purchaser to satisfy Section 9.01 (breach of rep).



(d) In the event the Closing occurs, the Good Faith Deposit will be credited toward the Purchase Price and released to Sellers and used to fund the Holdback Amount, as applicable, on the Closing Date pursuant to the terms set forth in the Deposit Escrow Agreement. This section shall survive termination of the Agreement.

(e) TO THE EXTENT SELLERS RECEIVE A PORTION OF OR THE ENTIRE GOOD FAITH DEPOSIT PURSUANT TO SECTION 4.07, THE GOOD FAITH DEPOSIT OR PORTION THEREOF AS SET FORTH IN THIS SECTION 4.07 SHALL BE SELLERS' SOLE REMEDY HEREUNDER.

(f) IN CONNECTION WITH THIS SECTION 4.07, PURCHASER AND SELLERS AGREE THAT, IF THE CLOSING DOES NOT OCCUR DUE TO A MISREPRESENTATION BY, OR BREACH OF AN OBLIGATION OF PURCHASER, IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES THAT SELLERS MAY SUFFER IN THE EVENT PURCHASER BREACHES THIS AGREEMENT. PURCHASER AND SELLERS THEREFORE AGREE THAT THE FOREGOING PAYMENTS REPRESENT REASONABLE ESTIMATES OF THE DETRIMENTS THAT SELLERS WOULD SUFFER IN THAT EVENT. ACCORDINGLY, IN THE EVENT OF A BREACH OF THIS AGREEMENT OR A MISREPRESENTATION HEREUNDER BY PURCHASER RESULTING IN A FAILURE TO CLOSE, PURCHASER AND SELLERS AGREE THAT THE FOREGOING PAYMENTS, INCLUDING PURSUANT TO SECTION 4.01(b) SHALL BE SELLERS' SOLE AND EXCLUSIVE REMEDIES AT LAW OR IN EQUITY FOR PURCHASER'S DEFAULT (WHICH SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677) AND SHALL NOT CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369. EACH OF PURCHASER AND SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389 WITH RESPECT TO THE PROVISIONS HEREOF.

PURCHASER INITIALS \_\_\_\_\_ SELLER INITIALS \_\_\_\_\_

**Section 4.09. Transfer Taxes.** Notwithstanding any provision in this Agreement to the contrary, all sales, use, transfer, documentary, stamp, recording and all other similar non-income Taxes arising out of or in connection with the purchase and sale of the Transferred Assets as contemplated in this Agreement (the "Transfer Taxes") shall be paid by Purchaser. Purchaser shall file all necessary Tax Returns and other documents required to be filed with respect to such Transfer Taxes and shall cooperate with Sellers to the extent reasonably necessary to make such filings or Tax Returns as may be required.

**Section 4.10. The Closing.** The consummation of the Contemplated Transactions (the "Closing") will be held by electronic exchange of documents (provided that if the Sellers and Purchaser mutually agree to a physical closing then the Closing shall take place at [TIME] Pacific Time at the offices of Ropes & Gray LLP, Three Embarcadero Center, San Francisco, CA 94111) as promptly as practicable following, but in no event later than the seventh (7<sup>th</sup>) Business Day following the satisfaction or waiver of each of the conditions set forth in ARTICLE IX and ARTICLE X (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at Closing) or such other time and place as Sellers and Purchaser may agree. However, all documents related to Real Property, or needed in



connection with Purchaser's financing, may at the request of either Party be exchanged through escrow, in coordination with the Title Company. Subject to the provisions of ARTICLE XI, the failure to consummate the Closing on the date and time determined pursuant to this Section 4.09 shall not result in the termination of this Agreement and shall not relieve either Party to this Agreement of any obligation under this Agreement.

**Section 4.11. Items to be Delivered by Sellers at Closing.** At or before the Closing, Sellers shall deliver to Purchaser the following, duly executed by Sellers where appropriate:

(a) Assignment, Bill of Sale and Assumption of Liabilities dated and effective as of the Closing Date and in the form of Exhibit C attached hereto (the "Bill of Sale");

(b) Assignment and Assumption of each Real Property Lease in the form of Exhibit D, dated and effective as of the Closing Date (the "Real Estate Assignments");

(c) Assignment and Assumption of Personal Property Leases in the form of Exhibit E, dated and effective as of the Closing Date;

(d) Certified articles of incorporation, bylaws and foreign corporation qualifications of Sellers;

(e) Reconveyance deeds terminating any Deeds of Trust encumbering the Owned Real Property and conveying title to the Owned Real Property from the trustee under such Deed of Trust to Sellers;

(f) grant deeds from Sellers to Purchaser conveying to Purchaser fee simple title to the Owned Real Property, free and clear of all encumbrances except for the Permitted Exceptions or as otherwise disclosed on the Title Commitment for the related Real Property, and the Assumed Liabilities;

(g) release of any lien under the Master Indenture or the Deeds of Trust on the Transferred Assets;

(h) favorable original certificates of good standing or comparable status of Sellers, issued by the State of California, dated no earlier than a date which is ten (10) Business Days prior to the Closing Date;

(i) a certificate of an authorized signatory of Sellers certifying to the satisfaction of Purchaser by Sellers of the provisions set forth in ARTICLE V and ARTICLE VII of this Agreement;

(j) a certificate certifying to Purchaser (i) the incumbency of the authorized signatory of Sellers on the Effective Date and on the Closing Date and bearing the authentic signatures of such authorized signatory who shall execute this Agreement and each of the Ancillary Agreements and (ii) the due adoption and text of the resolutions of the board of directors and sole corporate member of Sellers, which resolutions shall not be amended or rescinded and shall remain in full force and effect at the Closing Date, authorizing (A) the transfer of the Transferred Assets and Assumed Liabilities by Sellers to Purchaser and (B) the execution,

delivery and performance of this Agreement and all Ancillary Agreements and instruments by or on behalf of Sellers, as applicable;

(k) an executed certificate confirming Sellers' non-foreign status sufficient to comply with the requirements of Section 1445 of the Code, commonly known as the Foreign Investment in Real Property Tax Act of 1980, and regulations applicable thereto;

(l) Owner's Title Affidavit or any other documents reasonably requested by a title company in order to issue an Owner's Title Policy in the name of the Purchaser at Closing;

(m) the Holdback Escrow Agreement; and

(n) such other instruments and other documents which are reasonably requested by Purchaser to effect the intent of this Agreement.

**Section 4.12. Items to be Delivered by Purchaser at Closing.** At or before the Closing, Purchaser shall execute and deliver or cause to be delivered to Sellers the following, duly executed by Purchaser where appropriate:

(a) payment of the Cash Purchase Price (less the Good Faith Deposit if Purchaser chooses to credit it against the Purchase Price) plus the estimated amount of the Transfer Taxes. Such amount shall be payable by wire transfer of immediately available funds to Sellers to the account specified by Sellers to Purchaser in writing;

(b) a certificate of an authorized signatory of Purchaser certifying to Sellers' satisfaction of the provisions set forth in ARTICLE VI and ARTICLE VIII of this Agreement;

(c) a certificate certifying to Sellers (i) the incumbency of the officers of Purchaser on the Effective Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and each Ancillary Agreement and (ii) the due adoption and text of the resolutions of the board of directors of Purchaser, which resolutions shall not be amended or rescinded and shall remain in full force and effect after the Closing Date, authorizing (A) the purchase and assumption of the Transferred Assets and the Assumed Liabilities and (B) the execution, delivery and performance of this Agreement and all Ancillary Agreements and instruments by Purchaser;

(d) favorable original certificate of good standing, or comparable status, of Purchaser, issued by the State of California, dated no earlier than a date which is ten (10) Business Days prior to the Closing Date;

(e) a counterpart to the Bills of Sale;

(f) a counterpart to each of the Real Estate Assignments;

(g) the Holdback Escrow Agreement; and

(h) such other instruments and other documents which are reasonably requested by Sellers to effect the intent of this Agreement.

**Section 4.13. Disclaimer of Warranties; Release.**

(a) Except as expressly provided in this Agreement, [including without limitation the Sellers' representations at Article V and all Sections thereunder](#), each Seller and its Affiliates have not made or do not make and specifically disclaim, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) the nature, quality, sufficiency or condition of the Business or the Transferred Assets; (ii) the income to be derived from the Business or the Transferred Assets; or (iii) the compliance of or by the Business, the Transferred Assets or their operation with any Legal Requirement. Subject only to Sellers' representations and warranties, the Transferred Assets will be acquired by Purchaser in their physical condition on the Closing Date, "AS IS," "WHERE IS" AND "WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS," THAT IS, IN THEIR PRESENT CONDITION AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WITH NO WARRANTY OF NONINFRINGEMENT, AND NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION with respect to the Real Property, including, without limitation, the land, the buildings and the improvements and fixtures thereon, and WITH NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE with respect to the physical condition of the Real Property, the Personal Property and the Inventory, any and all of which warranties (both express and implied) Sellers for themselves and each of their Affiliates hereby disclaim. All of the Real Property and Personal Property shall be further subject to wear and tear and use of the Inventory and other supplies in the Ordinary Course of Business on and before the Closing Date.

(b) Purchaser acknowledges, covenants and agrees, on behalf of itself and its Affiliates: (i) that it has completed to its satisfaction its own due diligence investigation, and based thereon, formed its own independent judgment with respect to the Business, the Transferred Assets and Assumed Liabilities; (ii) that it has been furnished with or given full access to such documents and information about Sellers, its assets, liabilities, businesses and operations as it and its representatives and advisors have deemed necessary to enable it to make an informed decision with respect to the execution, delivery and performance of this Agreement and the Contemplated Transactions; (iii) that in entering into this Agreement, it has relied solely upon its own investigation and analysis and the representations, warranties, covenants and agreements set forth in this Agreement; and (iv) that (A) no representation or warranty has been or is being made by Sellers or any other Person as to the accuracy or completeness of any of the information provided or made available to Purchaser except as expressly set forth in [this Agreement, including without limitation the Sellers' representations at](#) ARTICLE V, and (B) there are uncertainties inherent in attempting to make estimates, projections, forecasts, plans, budgets and similar materials and information, Purchaser is familiar with such uncertainties, Purchaser is taking full responsibility for making its own evaluations of the adequacy and accuracy of any and all estimates, projections, forecasts, plans, budgets and other similar materials or information that may have been delivered or made available to it or any of its respective agents or representatives. Purchaser has relied or will rely on such information, and Purchaser will not assert, and will cause its Affiliates not to assert, any claims against Sellers or any of its Affiliates or Released Parties with respect thereto.

(c) Purchaser expressly waives any and all rights it may have against the Sellers and their Affiliates under Section 1542 of the California Civil Code ("Section 1542") and

under any statute, rule, or principle of common law or equity of any jurisdiction that is similar to Section 1542 (“Similar Provision”). Thus, Purchaser acknowledges that it may not invoke the benefits of Section 1542 or any Similar Provision against the Sellers and their Affiliates in order to prosecute or assert in any manner any claims released in this Agreement. The Parties are aware that Section 1542 provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” Purchaser acknowledges that it shall be forever barred from filing any claim or lawsuit released herein and enforcement of this Agreement is their sole remedy.

(d) SUBJECT ONLY TO PURCHASER’S RIGHTS TO INDEMNIFICATION AS SET FORTH IN ARTICLE XIV, PURCHASER AND EACH OF ITS MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLING PERSONS, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS HEREBY (I) WAIVE AND RELEASE SELLERS AND EACH OF THEIR AFFILIATES AND THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLING PERSONS, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “RELEASED PARTIES”) FROM ALL RESPONSIBILITY, CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES AND COURT COSTS) OF EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN (COLLECTIVELY, “LOSSES”), THAT PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLERS, THEIR AFFILIATES OR ANY RELEASED PARTIES AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT PHYSICAL CONDITIONS, VIOLATIONS OF LAW AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS CIRCUMSTANCES OR MATTERS REGARDING THE REAL PROPERTY, THE BUSINESS, THE HOSPITALS AND ANY ASSET AND/OR LIABILITY TRANSFERRED TO PURCHASER BY THIS AGREEMENT ~~(PROVIDED THAT SUCH RELEASE SHALL NOT APPLY TO ACTS OF ACTUAL FRAUD ENGAGED IN BY THE RELEASED PARTIES SOLELY IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS).~~

(e) NOTWITHSTANDING THE PRECEDING OR ANY OTHER TERM IN THIS AGREEMENT, THE RELEASES, WAIVERS AND LIMITATIONS AGREED TO IN THIS SECTION 4.12 SHALL NOT APPLY TO ACTS OF ACTUAL FRAUD ENGAGED IN BY THE RELEASED PARTIES IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS.

**Section 4.14. Risk of Loss.** If any part of the Transferred Assets is damaged, lost or destroyed (whether by fire, theft, or other cause or causality event), in whole or in part, prior to the Closing Date, the Parties agree that Purchaser’s sole remedy will be insurance proceeds or other claims against third parties.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Disclosure Schedules delivered by Sellers to Purchaser in accordance with the terms of this Agreement, including any documents attached to or incorporated by reference in such Disclosure Schedules, Sellers hereby represent and warrant to Purchaser that the statements contained in this ARTICLE V are true and correct as of the date hereof, except to the extent that any such representation and warranty expressly relates to any other specified date or time (including those that speak only as to the date hereof).

**Section 5.01. Power and Authorization.** Sellers have all necessary power and authority to enter into this Agreement and each Ancillary Agreement, and to carry out the Contemplated Transactions hereby.

**Section 5.02. Binding Agreement.** All actions required to be taken by Sellers to authorize the execution, delivery and performance of this Agreement, each Ancillary Agreement and the Contemplated Transactions have been duly and properly taken or obtained by Sellers. No other corporate or other action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement, each Ancillary Agreement and the Contemplated Transactions. This Agreement and each Ancillary Agreement has been, or will be, as applicable, duly and validly executed and delivered by Sellers and, assuming due and valid execution by Purchaser, this Agreement and each Ancillary Agreement constitutes a valid and binding obligation of Sellers enforceable in accordance with its terms.

**Section 5.03. Organization and Good Standing.** Each Seller is a nonprofit religious corporation duly organized, validly existing and in good standing under the laws of the State of California. The Sellers own, directly or indirectly, all of the outstanding equity interests of each of the Ancillary Businesses. There are no options, debentures, warrants, rights of first refusal or other rights to purchase or otherwise acquire an interest (whether equity or economic) outstanding in, or any Encumbrances against any of the outstanding equity interests of, any of the Ancillary Businesses. Schedule 5.03 sets forth the names of the record owners of the equity interests in each of the Ancillary Businesses and each other entity in which such entity holds any equity or other interest, if any. None of the Sellers has assigned any of its rights related to the equity interests that it holds in any of the Ancillary Businesses.

**Section 5.04. Non-Contravention.** Subject to any required consents for assignment, any third party rights in Intellectual Property and any Permitted Encumbrances, neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of (a) any material provision of the articles of incorporation or bylaws of Sellers, (b) any state or federal Legal Requirement applicable to Seller, or (c) any indebtedness, mortgage, lien, restriction, charge, security interest, claim, right of another, or other encumbrance upon any of the Transferred Assets whatsoever, under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, lease, license, franchise, agreement or other instrument or obligation to which any Seller is a party or by which any of the Transferred Assets are or will be bound except where such violations, conflicts or breaches would not have a Material Adverse Effect.

**Section 5.05. Compliance with Legal Requirements.** Except as set forth in Schedule 5.05(a), each Seller, with respect to the operation of the Hospitals and the remainder of the Business, is and has been in compliance with all Legal Requirements, including without limitation all Referral Laws and other Health Care Laws, except where the failure to be in such compliance would not have a Material Adverse Effect. Except as set forth in Schedule 5.05(b) and except as would not have a Material Adverse Effect, to the knowledge of Sellers, each Seller, with respect to the operation of the Hospitals and the Business, has not been given written notice of, and is not under investigation with respect to, any violation of any applicable Legal Requirements applicable to such Sellers' ownership and operation of the Hospitals and the rest of the Business. Each of the Sellers is and has been in compliance in all material respects with any and all Government Orders governing the conduct or operation of its business (including the Business), and all of its Licenses except where the failure to be in such compliance would not have a Material Adverse Effect. Each of Sellers are, and have been, in compliance in all material compliance with all applicable Legal Requirements applicable to Sellers by virtue of, and as needed to maintain, the status of Sellers as exempt from taxation, including pursuant to Section 501(c)(3) of the Code.

**Section 5.06. Environmental Matters.**

(a) Sellers have provided Purchaser with the Phase I Environmental Site Assessments for the Real Property.

(b) Except as disclosed on Schedule 5.06(b), to the knowledge of Sellers the operations of the Business are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or other Governmental Authority.

(c) There are no pending or, to the knowledge of Sellers, threatened actions, suits, claims, investigations, inquiries or proceedings by or before any court or any other Governmental Authority directed against Sellers that pertain or relate to (i) any material remedial obligations under any applicable Environmental Laws, (ii) material violations by Sellers of any Environmental Laws, or (iii) material personal injury or property damage claims relating to a release of or exposure to Hazardous Materials.

(d) To the knowledge of the Sellers, there has not been a release or threatened release of any Hazardous Materials at, upon, in, under or from the Hospitals or the Transferred Assets at any time in violation of Environmental Laws. Sellers have arranged any disposal of Hazardous Materials from the Hospital or the Transferred Assets with licensed contractors in accordance with applicable Environmental Legal Requirements.

**Section 5.07. Title; All Transferred Assets.** Prior to the Effective Date, DCHS has delivered at its own expense (i) for all the Real Property the existing preliminary title reports dated [ ] issued by Chicago Title Company (the "Title Commitments"), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the "Underlying Title Documents"), and (iii) for all of the Hospitals the existing as-built ALTA Surveys prepared by Mollenhauer Group or Bock & Clark and dated [ ] (the "Surveys", and collectively with the Title Commitment and the Underlying Title Documents, the "Title Documents").

(a) Sellers have good and clear, record and marketable fee simple title to the Owned Real Property, subject to the matters set forth in Schedule 5.07(a) and to the Permitted Exceptions. Sellers have good and valid title to the Personal Property which is material to the operations of the Hospitals and Medical Office Buildings.

(b) The Owned Real Property and the Personal Property are held by Sellers free and clear of all liens, pledges, claims, charges, security interests or other encumbrances, except for the Permitted Exceptions and the Assumed Liabilities. None of the Real Property is subject to a pending, or to the knowledge of Sellers, threatened, condemnation or similar proceeding or action or any proceeding or action to modify the zoning of, or other governmental rules or restrictions applicable to the Real Property or the use or development thereof.

(c) The Transferred Assets and the Retained Assets comprise substantially all of the property and assets used in the conduct of the Hospitals and Business. The Transferred Assets and the Retained Assets comprise all property and assets owned by the Sellers, except as set forth in Schedule 5.07(c).

**Section 5.08. Certain Other Representations with Respect to the Hospitals.**

(a) All Licenses which are material to the operation of the Hospitals by Sellers are valid and in good standing.

(b) The Hospitals are certified for participation in the Medicare, Medi-Cal and TRICARE programs, and have current and valid provider contracts with each such program, except where the failure to have such provider contracts would not have a Material Adverse Effect.

(c) Sellers, with respect to the operation of the Hospitals, have not been excluded from Medicare, Medi-Cal or any federal or state health care program, and there is no pending or, to the knowledge of Sellers, threatened exclusion, suspension or termination action by a Governmental Authority against Sellers with respect to the operation of the Hospitals.

(d) Except as otherwise provided in Schedule 5.08(d) none of the Sellers or the Hospitals has any reimbursement or payment rate appeals or disputes pending before any Governmental Authority or private payor program which are material and not occurring in the Ordinary Course of Business.

(e) Except as otherwise provided in Schedule 5.08(e), none of the Sellers or the Hospitals has received any notice of denial of payment, recoupment, withhold, suspension or overpayment from any Government Reimbursement Program or private payor program which are material and not occurring in the ordinary course of business

(f) Each Hospital is duly accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”) for the period set forth in Schedule 5.08(f). Except as set forth in Schedule 5.08(f), Seller has not received any notices of material deficiencies from JCAHO with respect to the Hospitals’ current accreditation period which require or request any action or response by Seller or the Hospitals.



(g) Sellers have not received a notice of default under either the 2005 Bonds and 2014 Bonds; and, to the knowledge of Sellers, Sellers are in material compliance with their obligations under the 2005 Bonds and 2014 Bonds.

**Section 5.09. Brokers and Finders.** Neither Sellers nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the Contemplated Transactions, except as set forth on Schedule 5.09.

**Section 5.10. Financial Statements.**

(a) Schedule 5.10(a) hereto contains the following financial statements (collectively, the “Historical Financial Statements”): (a) the audited balance sheets of the Hospitals dated as of June 30, 2011, June 30, 2012, and June 30, 2013, and (b) audited income statements of the Hospitals for the twelve-month periods ended on June 30, 2011 and June 30, 2012 and for June 30, 2013. Except as set forth on Schedule 5.10(b) the income statements contained in the Historical Financial Statements present, and contained in the Interim Financial Statements, as well as the Closing Balance Sheet and Closing Statement, shall present, fairly in all material respects the results of the operations of the Hospitals as of and for the periods covered therein and, except as set forth on Schedule 5.10(c), the balance sheets contained in the Historical Financial Statements present, and in the Interim Financial Statements and Closing Balance Sheet and Closing Statement shall present, taken together as a whole, fairly in all material respects the financial condition of Sellers as of the dates indicated thereon, in each case in accordance with GAAP.

(b) With respect to the Sellers Accounts Receivable, the Historical Financials, the Interim Financials and other records provided by Sellers to Purchaser regarding the Sellers’ Accounts Receivable accurately reflect in all material respects the amount due to Sellers as of the date indicated on such statements and/or records with reasonable reserves and allowances. All outstanding Sellers Accounts Receivable arose in the normal course of business.

(c) Unless otherwise disclosed in the Historical Financial Statements, Sellers (other than the DCHS Medical Foundation) have made no, and are subject to no, contractual or other commitment or obligation to make capital contributions or other donations or payments to the DCHS Medical Foundation.

**Section 5.11. Legal Proceedings.**

(a) Except as set forth on Schedule 5.11(a)-1, there are no claims, proceedings or investigations (including without limitation, to the knowledge of Sellers, any alleged qui tam relator action) pending or, to the knowledge of Sellers, threatened, with respect to the operation of the Hospitals by Sellers before any Governmental Authority in which an adverse determination would have a Material Adverse Effect. Except as set forth on Schedule 5.11(a)-2, with respect to the operation of the Hospitals or the rest of the Business by Sellers, Sellers are not subject to any Government Order with respect to the operation of the Hospitals or the rest of the Business by Sellers, or the Hospitals or the Transferred Assets. Except as set forth on Schedule 5.11(a)-3, Sellers are in substantial compliance with respect to each Government Order noncompliance with which could be expected to have a Material Adverse Effect.



(b) Except as disclosed on Schedule 5.11(b), there are no pending or, to the knowledge of Sellers, threatened material disciplinary or corrective actions or appeals therefrom involving physician applicants, active medical staff members or affiliated health professionals under the medical staff by Legal Requirements at each Hospital. Sellers have provided to Purchaser a true, correct and complete copy of the bylaws, rules and regulations of the medical staff at each Hospital and its executive committee.

(c) There is no claim, proceeding, or investigation pending or, to the knowledge of Sellers, threatened, relating to or affecting Sellers with respect to the operation of the Hospitals and Business before any court or governmental body (whether judicial, executive or administrative) which: (a) materially adversely affects or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement; (b) materially adversely affects or questions the validity or enforceability of this Agreement; (c) questions the power or authority of any Seller to carry out the transactions contemplated by, or to perform its obligations under, this Agreement; or (d) would result in any change which would materially adversely affect the ability of any Seller to perform any of its obligations hereunder.

#### **Section 5.12. Employee Benefits.**

(a) Schedule 5.12(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement, whether oral or written, which constitutes an Employee Pension Benefit Plan, (ii) each medical, health, disability, insurance or other plan or arrangement, whether oral or written, which constitutes an Employee Welfare Benefit Plan, and (iii) each other material employee benefit, bonus, incentive, deferred compensation, severance, change in control, fringe benefit, performance or retention plan, in each case, that is maintained, contributed to or provided by Sellers or under which Sellers have any obligations and that covers any current or former officers, directors, employees, independent contractors or consultants of Sellers (collectively, the "Sellers' Plans").

(b) Sellers have made available to the Purchaser true, complete and correct copies of (i) each Sellers' Plan (or, in the case of any unwritten Sellers' Plan, a description thereof); (ii) the most recent annual report on Form 5500 filed with the Internal Revenue Service with respect to each Sellers' Plan (if any such report was required); (iii) the most recent summary plan description for each Sellers' Plan for which such summary plan description is required; and (iv) each trust agreement and group annuity contract relating to any Sellers' Plan, if any.

(c) Except as otherwise provided on Schedule 5.12(c), to the knowledge of Sellers, Sellers do not have any direct or indirect, actual or contingent liability with respect to any Sellers' Plan, other than to make payments for contributions, premiums or benefits when due in the Ordinary Course of Business, all of which payments that are due having been made. The Hospitals are not subject to any lien under ERISA or the Code.

(d) All of the Sellers' Plans have been administered in material compliance with ERISA and the Code, to the extent applicable. Except as otherwise provided on Schedule 5.12(d) there are no "accumulated funding deficiencies" in respect of any Seller Plan or any federal excise Tax or other liability on account of any deficient fundings in respect of the Sellers Plan Notwithstanding the foregoing, in the event that it is determined by an authoritative ruling by the Internal Revenue Service or Department of Labor, or a decision by a court of competent

jurisdiction, that any of Defined Benefit Church Plan, Defined Contribution Church Plans or Employee Welfare Benefit Plans failed to qualify as a non-electing “church plan” as defined in Section 3(33) of ERISA and Section 414(e) of the Code, the failure of DCHS to maintain or administer such plan in accordance with provisions of ERISA and the Code not applicable to church plans shall not constitute a breach of this Section 5.12(d) or any other provision of the Agreement (including without limitation the last sentence of Section 5.12(c)).

(e) Except as otherwise provided on Schedule 5.12(e) no Sellers’ Plan provides retiree medical or other retiree welfare benefits to any person (other than health care continuation coverage as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or analogous state law).

(f) No Seller Plan contains any provisions, or is subject to any restrictions, that would preclude its assumption in connection with the transactions contemplated by this agreement, except for required consents as listed at Schedule 5.12(f), and Sellers know of no reason to expect that such consents will be unable to obtained prior to Closing.

### **Section 5.13. Personnel.**

(a) Schedule 5.13(a) sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates, bonus and other compensation and/or benefit arrangements, and the accrued paid time off pay (and period of service credited for vesting) of all employees of DCHS and its Affiliates immediately prior to the Effective Date, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to DCHS’ policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the “Hospital Employees”) and indicating whether the Hospital Employee is full-time or part-time. Sellers shall have the right to update to Schedule 5.13(a) to reflect changes in employment status and/or new hires and terminations occurring after the Effective Date by providing a revised schedule to Purchase no later than five (5) Business Days before the date schedule for the Closing.

(b) Except as listed in Schedule 5.13(b), there is no unfair labor practice complaint against Sellers pending, or to the knowledge of Sellers threatened, before the National Labor Relations Board with respect to the operation of the Hospitals that would have a Material Adverse Effect, and there is no labor strike, arbitration, dispute, slowdown or stoppage, and no union organizing campaign, pending or, to the knowledge of Sellers, threatened, by or involving the Hospitals Employees, that would have a Material Adverse Effect.

(c) Schedule 5.13(c) sets forth a complete list of the names and positions of all full-time Hospital Employees with respect to the operation of the Hospitals that have been laid-off or terminated during the ninety (90) calendar days immediately preceding the Effective Date. Sellers shall update Schedule 5.13(c) at Closing to reflect such terminations occurring during the ninety (90) calendar days immediately preceding the Closing Date.

(d) Except as provided in Schedule 5.13(d), to the knowledge of Sellers, since January 1, 2012 (i) Sellers have substantially complied with all applicable Legal Requirements relating to employee health and safety in all material respects and (ii) Sellers have not received any written notice from any Governmental Authority that past or present conditions of the

Hospitals or the Transferred Assets violate any applicable Legal Requirements or otherwise will be made the basis of any claim, proceeding, or investigation based on violations of the Occupational Safety and Health Act of 1970 or otherwise related to employee health and safety.

**Section 5.14. Insurance.** Sellers maintain, and have maintained, without interruption, at all times during Sellers' ownership of the Hospitals prior to the Closing Date, self-insurance or policies or binders of insurance covering such risks and events, including personal injury, property damage, malpractice and general liability, to provide adequate and sufficient insurance coverage for the Transferred Assets and operation of the Hospitals. Schedule 5.14 contains a list of all such insurance maintained by Sellers with respect to the Transferred Assets and the operation of the Hospitals and Business as of the Effective Date.

**Section 5.15. Required Consents.** No consent, waiver, approval, order or authorization of, accreditation by, clearance, certification, License, permit, entitlement, or approval from, registration, declaration or filing with, agreements to own and operate the Business or, with respect to the Hospitals, participate in any Government Payment Program, or notice to any Governmental Authority or accrediting or certifying body, including, but not limited to, approval (including conditional approval) of the Contemplated Transaction by the Attorney General of the State of California ("AG Approval") (each, a "Governmental Approval") is necessary or required for the execution and delivery of this Agreement by Sellers or for the consummation by Sellers of the Contemplated Transactions, except for such Governmental Approvals set forth in Schedule 5.15 or as may be required under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and any other applicable antitrust Legal Requirements (collectively, "Antitrust Laws").

**Section 5.16. Health Care Compliance.**

(a) Since January 1, 2011, to the knowledge of Sellers, Sellers have never received any subpoenas, demands or other notices from any Governmental Authority investigating, inquiring into or otherwise relating to any material violation of any law, including any Health Care Law and, to the knowledge of Sellers, Sellers are not under investigation by any governmental authority for a violation of any law, including any Health Care Law.

(b) Since January 1, 2011, to the knowledge of Sellers, there have been (i) no material statements of deficiencies filed against Sellers by the California Department of Public Health or the Centers for Medicare & Medicaid Services, and (ii) no penalties asserted against Sellers issued under California Health and Safety Code Section 1280.1, except as set forth and described (including status and resolution of any such statements of deficiencies) on Schedule 5.16(b).

(c) Sellers have never been denied approval (or asked to withdraw an application) to acquire control or licensure of a hospital or long-term care facility by a Governmental Authority, except as set forth on Schedule 5.16(c).

(d) To the knowledge of Sellers, neither Sellers nor any officer, director, nor any managing employee of Sellers, have engaged or is engaging in any activities, which are cause for civil monetary penalties or mandatory or permissive exclusion from any Government Payment Program. To the knowledge of Sellers, neither Sellers, nor any officer, manager or employee of

Sellers having direct patient-care responsibilities is currently excluded, debarred, suspended or otherwise ineligible to participate in any Government Payment Program, or has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), nor, to the knowledge of Sellers, are any such exclusions, sanctions or charges threatened or pending.

(e) Neither Sellers nor, to the knowledge of Sellers, any officer, director or employee of Sellers has now or in the past three years, been subject to or bound by a corporate integrity agreement with the United States Department of Health and Human Services Office of the Inspector General or other similar agreement (*e.g.*, deferred prosecution agreement) with any governmental entity.

(f) To the knowledge of the Sellers, none of the Sellers is in material violation of the applicable requirements of the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 (as amended by the Health Information Technology for Economic and Clinical Health Act, Subtitle D of Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and the regulations promulgated thereunder as set forth in the Code of Federal Regulations (“C.F.R.”) at Title 45, Part 160, Part 162 and Part 164, and other applicable laws (collectively, “HIPAA”) or of any similar state Legal Requirements, including, without limitation, the California Medical Information Act (Civil Code Section 56 *et. seq.*). To the knowledge of the Sellers, none of the Sellers is in material violation of the requirements of any "business associate" agreement entered into at the request of a HIPAA covered entity. As of the date hereof, no Breach has occurred with respect to any unsecured Protected Health Information maintained by or for any Seller that is subject to the notification requirements under HIPAA or under any comparable state Legal Requirements. For purposes of this paragraph, "Breach" means the unauthorized acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164, Subparts A and E. which compromises the security or privacy of the Protected Health Information, as described in 45 C.F.R. 164.402.

(g) Neither the Sellers, nor to the knowledge of the Sellers, any employees of any Sellers, have directly or indirectly (i) made any contribution or gift which contribution or gift is in violation of any applicable Legal Requirements, (ii) made any bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services (A) to obtain favorable treatment in securing business, (B) to pay for favorable treatment for business secured, (C) to obtain special concessions or for special concessions already obtained for or in respect of any Sellers or any Affiliate thereof, in violation of any Legal Requirements, including the Health Care Laws, established or maintained any fund or asset of any Sellers that has not been recorded in the books and records of such Sellers, or (iii) established, operated or maintained any program, scheme, practice, policy or system that would reward or compensate employees or contractors for marketing or promotion activities, in each case that violate or violates any Legal Requirements, including the Health Care Laws.

(h) As required by applicable Legal Requirements, each of the Sellers has (A) verified that all employees providing clinical services have valid and current licenses, permits and credentials as legally required to provide such services, (B) conducted criminal background checks on all applicable employees and independent contractors, and (C) screened all officers,

directors, employees and independent contractors under the HHS/OIG List of Excluded Individuals/Entities.

(i) To the knowledge of Sellers, all billings by the Sellers comprising accounts receivable recorded on the Balance Sheet were for goods and services actually provided by the applicable Sellers, and at legally permissible charges or costs, and the Sellers have, in all material respects, all necessary documentation to support such billings, except as would not cause a Material Adverse Effect. All claims have been timely filed and are complete and accurate in all respects and prepared in accordance with applicable Legal Requirements, including the Health Care Laws, except as would not cause a Material Adverse Effect. Sellers are not obligated to make any repayments of, or to make any disclosures to any Governmental Authorities, regarding any overpayment received from any Government Payment Programs or private payor programs, except as would not cause a Material Adverse Effect.

**Section 5.17. Taxes.** Sellers have duly filed all federal, state and local Tax Returns required to be filed (all of which are true and correct in all material respects) and have duly paid or made provision in their financial statements for the payment of all Taxes (including any interest or penalties and amounts due state unemployment authorities) which are due and payable, whether or not in connection with such returns. Sellers (with respect to the operation of the Business) have withheld proper and accurate amounts from its employees' compensation, and made deposits of all such withholdings, in material compliance with all withholding and similar provisions of the Code and any and all other applicable laws. There are no liens for Taxes upon the Transferred Assets, except for statutory liens for current Taxes not yet due and payable or which may hereafter be paid without penalty or which are being contested in good faith by appropriate proceedings. Except as set forth in Schedule 5.17, none of the Sellers is a party to any action or proceeding, nor to the knowledge of Sellers, is any such action of proceeding contemplated or threatened, for the assessment or collection of any Taxes relating to the Business or the Transferred Assets, and no deficiency notices or reports have been received by any of the Sellers in respect of any Tax relating to the Business or the Transferred Assets.

## **ARTICLE VI.**

### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Except as set forth in the Disclosure Schedules, including any documents attached to or incorporated by reference in such Disclosure Schedules, Purchaser hereby represents and warrants to Sellers that the statements contained in this ARTICLE VI are true and correct as of the date hereof, except to the extent that any such representation and warranty expressly relates to any other specified date or time (including those that speak only as to the date hereof).

**Section 6.01. Power and Authorization.** Purchaser has all necessary power and authority to enter into this Agreement and each Ancillary Agreement, and to carry out the Contemplated Transactions.

**Section 6.02. Binding Agreement.** All corporate and other actions required to be taken by Purchaser to authorize the execution, delivery and performance of this Agreement and each Ancillary Agreement, and the Contemplated Transactions, have been duly and properly taken or obtained by Purchaser. No other corporate or other action on the part of Purchaser is necessary to

authorize the execution, delivery and performance of this Agreement, each Ancillary Agreement, and the Contemplated Transactions. This Agreement and each Ancillary Agreement has been, or will be, as applicable, duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement and each Ancillary Agreement constitute valid and binding obligations of Purchaser enforceable in accordance with their terms.

**Section 6.03. Organization and Good Standing.** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of California.

**Section 6.04. Noncontravention.** Neither the execution and delivery by Purchaser of this Agreement and the Ancillary Agreements, nor the consummation of the Contemplated Transactions nor compliance with any of the provisions hereof by Purchaser will violate, will constitute a violation of, or be in conflict with, or constitute or create a default or accelerate or adversely affect any obligations under (a) the articles of incorporation, bylaws or other organizational documents of Purchaser or (b) any Legal Requirement.

**Section 6.05. Brokers and Finders.** Neither Purchaser nor any Affiliate thereof, nor any officer or director thereof, has engaged or incurred any liability to any finder, broker or agent in connection with the Contemplated Transactions.

**Section 6.06. Legal Proceedings.** Except as set forth on Schedule 6.06(a), there are no claims, proceedings or investigations pending or, to the knowledge of Purchaser, threatened, which would either have a material adverse effect on the properties or business condition (financial or otherwise) of Purchaser or would adversely affect Purchaser's ability to consummate the Contemplated Transactions. Except as set forth on Schedule 6.06(b), Purchaser is not subject to any Government Order that would either have a material adverse effect on the properties or business condition (financial or otherwise) of Purchaser or would adversely affect Purchaser's ability to consummate the Contemplated Transactions. Except as set forth on Schedule 6.06(c), Purchaser is in substantial compliance with respect to any Government Order the noncompliance with which could reasonably be expected to have a material adverse effect, on the properties or business condition (financial or otherwise) of Purchaser or would adversely affect Purchaser's ability to consummate the Contemplated Transactions.

**Section 6.07. Health Care Compliance.**

(a) Since January 1, 2011, to the knowledge of Purchaser, Purchaser has never received any subpoenas, demands or other notices from any Governmental Authority investigating, inquiring into or otherwise relating to any material violation of any law, including any Health Care Law; and, to the knowledge of Purchaser, Purchaser is not under investigation by any governmental authority for a violation of any law, including any Health Care Law.

(b) Since January 1, 2011, to the knowledge of Purchaser, except as set forth on Schedule 6.07(b), there have been (i) no material statements of deficiencies filed against Purchaser or its Affiliates by the California Department of Public Health or the Centers for Medicare & Medicaid Services, which have not been successfully resolved, though accepted plans of corrections or other actions or which have not had a material and adverse effect on Purchaser or its Affiliates and (ii) no penalties asserted and assessed against Purchaser or its Affiliates issued under California Health and Safety Code Section 1280.1, except for any penalties which have not

had a material and adverse effect on Purchaser or its Affiliates or as set forth and described (including status and resolution of any such statements of deficiencies) on Schedule 6.07(b).

(c) Neither Purchaser nor its Affiliates has ever been denied approval (or asked to withdraw an application) to acquire control or licensure of a hospital or long-term care facility by a Governmental Authority, except as set forth on Schedule 6.07(c).

(d) To the knowledge of Purchaser, neither Purchaser nor any officer, director, nor to the knowledge of Purchaser any managing employee of Purchaser has engaged or is engaging in any activities, which are cause for civil monetary penalties or mandatory or permissive exclusion from any Government Payment Program. To the Purchaser's knowledge, neither Purchaser nor any officer, manager or employee of Purchaser having direct patient-care responsibilities is currently excluded, debarred, suspended or otherwise ineligible to participate in any Government Payment Program, or has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), nor, to the Purchaser's knowledge, are any such exclusions, sanctions or charges threatened or pending.

(e) Neither Purchaser nor, to the knowledge of the Sellers, any officer, director or employee of Purchaser has now or in the past three years, been subject to or bound by a corporate integrity agreement with the United States Department of Health and Human Services Office of the Inspector General or other similar agreement (*e.g.*, deferred prosecution agreement) with any governmental entity.

(f) To the knowledge of the Purchaser, Purchaser is not in material violation of the applicable requirements of HIPAA or of any similar state Legal Requirements, including, without limitation, the California Medical Information Act (Civil Code Section 56 et seq.). To the knowledge of the Purchaser, Purchaser is not in material violation of the requirements of any "business associate" agreement entered into at the request of a HIPAA covered entity. As of the date hereof, no Breach has occurred with respect to any unsecured Protected Health Information maintained by or for the Purchaser that is subject to the notification requirements under HIPAA or under any comparable state Legal Requirements. For purposes of this paragraph, "Breach" means the unauthorized acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164, Subparts A and E. which compromises the security or privacy of the Protected Health Information, as described in 45 C.F.R. 164.402.

(g) Neither the Purchaser, nor to the knowledge of the Purchaser, any employees of Purchaser, have directly or indirectly (i) made any contribution or gift which contribution or gift is in violation of any applicable Legal Requirements, (ii) made any bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services (A) to obtain favorable treatment in securing business, (B) to pay for favorable treatment for business secured, (C) to obtain special concessions or for special concessions already obtained for or in respect of Purchaser or any Affiliate thereof, in violation of any Legal Requirements, including the Health Care Laws, established or maintained any fund or asset of Purchaser that has not been recorded in the books and records of Purchaser, or (iii) established, operated or maintained any program, scheme, practice, policy or system that would reward or compensate employees or contractors for

marketing or promotion activities, in each case that violate or violates any Legal Requirements, including the Health Care Laws.

(h) As required by applicable Legal Requirements, Purchaser has (A) verified that all employees providing clinical services have valid and current licenses, permits and credentials as legally required to provide such services, (B) conducted criminal background checks on all applicable employees and independent contractors, and (C) screened all officers, directors, employees and independent contractors under the HHS/OIG List of Excluded Individuals/Entities.

(i) To the knowledge of Purchaser all billings by the Purchaser comprising accounts receivable recorded [on the unaudited June 30, 2014 balance sheet of Purchaser] were for goods and services actually provided by the Purchaser, and at legally permissible charges or costs, to patients qualified and eligible under applicable Government Payment Programs or private payor programs under which such services to such patients were billed, and the Purchaser has, in all material respects, all necessary documentation to support such billings, except as would not cause a Material Adverse Effect. All claims have been timely filed and are complete and accurate in all respects and prepared in accordance with applicable Legal Requirements, including the Health Care Laws, except as would not cause a Material Adverse Effect. Purchaser is not obligated to make any repayments of, or to make any disclosures to any Governmental Authorities, regarding any overpayment received from any Government Payment Programs or private payor programs, except as would not cause a Material Adverse Effect.

**Section 6.08. Ability to Close.** Together with the amounts available to Purchaser through the Purchaser Financing, [but subject to the conditions and qualifications for funding and receipt of the Purchaser Financing, including as reflected in the Commitment Letters related thereto \(as further addressed at Section 6.11\)](#), Purchaser has as of the Effective Date and will have at the Closing funds which are sufficient to pay the sum of the Cash Purchase Price, plus any other amounts payable in cash by Purchaser at Closing pursuant to this Agreement and each Ancillary Agreement, less (i) the amount of the Good Faith Deposit funded to DCHS, and (ii) as of the Closing Date, less the amount of available cash of DCHS (exclusive of Restricted Cash).

**Section 6.09. Required Consents.** No Governmental Approval is necessary or required for the execution and delivery of this Agreement by Purchaser or for the consummation by Purchaser of the Contemplated Transactions, except for such Governmental Approvals set forth in [Schedule 6.09](#) or as may be required by the California Attorney General and under the HSR Act, and any other applicable Antitrust Laws.

**Section 6.10. Purchaser's Experience and Investigation.** Purchaser has, and has available to it, extensive knowledge and experience in financial, regulatory and business matters relating to owning and operating general acute care Hospitals. Purchaser has reviewed all information it deems necessary to its satisfaction with respect to the Transferred Assets and Assumed Liabilities. Purchaser has relied solely upon its own investigation of the business, assets, risks and prospects of the Business (which, except as herein provided, it has completed prior to entering into this Agreement) and those express representations, warranties, covenants and agreements set forth in this Agreement or in any instrument or document delivered by Sellers pursuant to this Agreement. Purchaser acknowledges that neither Sellers nor any of their officers, directors, employees, representatives, Affiliates or agents assumes any responsibility for the accuracy or adequacy of



any information heretofore or hereafter furnished to the Purchaser by or on behalf of Sellers with respect to the Transferred Assets and Assumed Liabilities, except as expressly provided in this Agreement and the Disclosure Schedules. Without limiting the generality of the foregoing, Purchaser understands that any cost estimates, projections or other forward-looking information provided to Purchaser by or on behalf of Sellers are not and shall not be deemed to be representations and warranties of Sellers, except to the extent reflected in the express representations and warranties of Sellers made in this Agreement or in any instrument or document delivered by Sellers pursuant to this Agreement. Except with respect to the express representations and warranties of Sellers made in this Agreement or in any instrument or document delivered by Sellers pursuant to this Agreement, Purchaser acknowledges that (a) there are uncertainties inherent in attempting to make such estimates, projections and other predictions; (b) Purchaser is familiar with such uncertainties; and (c) Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections or other predictions so furnished to it.

**Section 6.11. Commitment Letter.** Attached as Exhibit F hereto is a true, complete and accurate copy of the financing letter(s) received by Purchaser from debt and/or other capital sources (the “Commitment Letters”) setting forth such parties’ proposal/commitment to undertaking the transactions with Purchaser described therein in connection with the Contemplated Transactions, subject to the express terms and conditions set forth therein, to provide the capital sources to Purchaser in the amounts specified therein (“Purchaser Financing”). Other than the Commitment Letters and customary fee letters, joinder documentation and non-disclosure agreement, there are no other agreements between Purchaser, on the one hand, and any of the counterparties to the Commitment Letters, on the other hand, with respect to any of the arrangements contemplated thereby and/or with respect to the transactions contemplated hereby. The Commitment Letters are, subject to the terms and conditions included therein, the legal, valid and binding obligation or understandings, to the extent of their terms and conditions, of Purchaser and, to the knowledge of the Purchaser, each of the counterparties thereto and has not been modified, amended, supplemented, withdrawn and/or terminated prior to the date hereof in any respect and no provision thereof has been waived prior to the date hereof. There are no other agreements to which Purchaser or any Affiliate of Purchaser is a party that would reasonably be expected to adversely affect or impair the availability of the Purchaser Financing contemplated by the Commitment Letter. Purchaser has no knowledge of any event that, with or without notice or lapse of time or both, would constitute a default or breach by Purchaser under the Commitment Letters or that would reasonably be expected to result in any of the conditions set forth in the Commitment Letters not being satisfied or any financing contemplated by the Commitment Letters not being provided to Purchaser on the Closing Date.

**Section 6.12. Solvency.** Purchaser is solvent and, subject to consummation of the Purchaser Financing at Closing, will not be rendered insolvent as a result of any of the Contemplated Transactions. For purposes hereof, the term “solvency” means that: (a) the fair salable value of Purchaser’s tangible assets is in excess of the total amount of its liabilities (including for purposes of this definition all liabilities, whether or not reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and whether direct or indirect, fixed or contingent, secured or unsecured, and disputed or undisputed); (b) Purchaser is able to pay its debts or obligations in the ordinary course as they mature; and (c) Purchaser has capital sufficient to carry on its businesses and all businesses which it is about to engage.

**Section 6.13. Title.** Prior to the Effective Date, Sellers have delivered at their own expense for all the Real Property the Title Documents.

## **ARTICLE VII.**

### **COVENANTS OF SELLERS**

**Section 7.01. Required Approvals; Change in Ownership Applications.**

(a) Sellers shall (i) use diligent efforts, as reasonably requested by Purchaser, to assist Purchaser in the securing of, as promptly as practicable and before the Closing Date, all Governmental Approvals (subject to Section 7.01(b)(ii)), and (ii) will provide such other information and communications to Governmental Authorities and accrediting and certifying bodies as Purchaser or such authorities and bodies may reasonably request. Sellers shall also reasonably assist Purchaser to complete change of ownership applications and notices with respect to Licenses, billing numbers, provider applications and other permits relating to the Hospitals for each of the functions at the Hospitals which require approval of the change of ownership by a Governmental Authority or by a third party payor (an “Application”). Sellers shall provide Purchaser in a timely manner with such information about the Hospitals as may be needed for the completion and filing of each Application.

(b) Within fifteen (15) days after the Effective Date, Sellers shall file all necessary regulatory filings set forth on Schedule 7.01(b)(i), which shall include at a minimum the following:

(i) The required Notification and Report Form for Certain Mergers and Acquisitions under the HSR Act with the U.S. Federal Trade Commission and the U.S. Department of Justice Antitrust Division, and such other filings as Purchaser and Sellers may mutually determine are necessary or desirable in connection with the Contemplated Transactions under applicable Antitrust Laws (collectively, the “Antitrust Filings”) with the appropriate Governmental Authority designated by law to receive such filings. As promptly as is practicable after receiving any request from the U.S. Department of Justice or the U.S. Federal Trade Commission for information, documents, or other materials in connection with the review of the Antitrust Filings, Sellers shall use reasonable efforts to comply with such request. Sellers shall promptly inform Purchaser of any material communication with, and any proposed understanding, agreement or undertaking with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Antitrust Filings. Sellers shall give Purchaser reasonable advance notice of, and the opportunity to participate in any inquiry or investigation by, or any material meeting or conference (whether by telecommunications or in person) with, the U.S. Department of Justice or the U.S. Federal Trade Commission or the California Attorney General relating to the Antitrust Filings. Sellers shall deliver to Purchaser within five (5) Business Days following the filing thereof, a complete and accurate copy of any Antitrust Filing filed by Sellers. All fees required to be paid to the U.S. Federal Trade Commission and any other Governmental Authority in connection with the Antitrust Filings shall be paid solely by Purchaser at the time of filing.

(ii) The filing required by the California Attorney General for approval of the Contemplated Transaction, and any other such filings as Sellers may determine are necessary or desirable in connection with receiving AG Approval. As promptly as is practicable after receiving any request from the California Attorney General for information, documents, or other materials in connection with the review of the request for AG Approval, Sellers shall use reasonable efforts to comply with such request. Sellers shall promptly inform Purchaser of any material communication with, and any proposed understanding, agreement or undertaking with, the California Attorney General relating to the AG Approval. Sellers shall give Purchaser reasonable advance notice of, and the opportunity to participate in any inquiry or investigation by, or any material meeting or conference (whether by telecommunications or in person) with, the California Attorney General relating to the AG Approval. Sellers shall deliver to Purchaser within five (5) Business Days following the filing thereof, a complete and accurate copy of any materials filed with the California Attorney General by Sellers in connection with the AG Approval. Purchaser shall pay or refund to Sellers all fees required to be paid to the California Attorney General.

**Section 7.02. Consents to Assignment.** Sellers shall use commercially reasonable efforts to obtain prior to the Closing, any and all consents to assign any Contracts and Leased Real Property. As soon as commercially reasonable, Sellers shall send consent requests with respect to each Contract. Sellers shall cooperate with Purchaser as reasonably requested to obtain any such consents.

**Section 7.03. Conduct of the Business Generally.** From the Effective Date until the Closing, or the earlier termination of this Agreement in accordance with ARTICLE XI, unless otherwise agreed in writing in advance by Purchaser, except to the extent described on Schedule 7.03, Sellers shall, with respect to the operation of the Hospitals:

(a) carry on Sellers' operation of the Hospitals and Business consistent with past practice and applicable material Legal Requirements;

(b) maintain in effect the insurance and equipment replacement coverage described on Schedule 7.03(b);

(c) make such capital expenditures as may be necessary to maintain operation of the Transferred Assets in working condition consistent with past practice, subject to ordinary wear and tear; provided that Sellers will not undertake any new capital expenditures outside the Ordinary Course of Business involving a purchase, cost or lease value in excess of \$100,000 per project without Purchaser's prior written approval; provided that Seller shall use commercially reasonable efforts to consult with Purchaser in advance of making any capital expenditures, whether or not they are to be made in the Ordinary Course of Business or are less than \$100,000;

(d) pay any stay bonus agreed to prior to the Effective Date and provide reasonable compensation in the form of a stay bonus, which collectively in the aggregate shall not exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) to certain key employees in order to retain such employees as Sellers deem necessary in order to effectively operate the Hospitals, DCHS or any Affiliate of DCHS;

(e) use reasonable efforts to preserve intact Sellers' and the Business's business organization and relationships with third parties (including lessors, lessees licensors, suppliers, distributors, unions and patients) and Hospital Employees; and

(f) administer labor relations (including contract administration, grievances and arbitration, and collective bargaining) and employment matters of the Business in the Ordinary Course of Business.

**Section 7.04. Conduct of Business.** From the Effective Date until the Closing, or the earlier termination of this Agreement in accordance with ARTICLE XI, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, and except to the extent described on Schedule 7.04, Sellers shall not take any of the following actions, or agree to take any such actions:

(a) amend the Articles of Incorporation of Sellers, including without limitation the DCHS Medical Foundation and the Ancillary Businesses;

(b) merge or consolidate Sellers, including without limitation the DCHS Medical Foundation and the Ancillary Businesses;

(c) except as permitted by Section 7.03, increase any benefits under any Sellers' Plan or increase the compensation payable or paid, whether conditionally or otherwise, to any employee of Sellers or the Business, or the DCHS Medical Foundation in an amount over \$100,000 other than (i) any such increase adopted in the Ordinary Course of Business; or (ii) any such increase in benefits or compensation required by Legal Requirements or required pursuant to the terms of an existing Sellers' Plan or an existing employment, consulting, indemnification, change of control, severance, retention or similar agreement with any current or former director, officer, employee or consultant of the Business, provided in all cases Sellers will use reasonable best efforts to consult with Purchaser prior to any such increases; it being understood that in no event shall the termination of the Daughters of Charity Health System 401(a)(17) Retirement Plan and the Daughters of Charity Health System 401(a)(17) Supplemental Retirement Plan Account, or the payments to participants thereunder in accordance with such termination, require prior written consent of Purchaser; or

(d) except in the Ordinary Course of Business, sell, lease, license or otherwise dispose of any of the material Transferred Assets of Sellers;

(e) Notwithstanding any provision to the contrary contained in this Agreement, neither Section 7.03 nor this Section 7.04 shall be construed to prohibit Sellers from engaging in any act which Sellers reasonably believe is necessary to preserve and protect the continued condition and operation of the Hospitals or to perform the contractual obligations of Sellers; provided in all cases Sellers will use reasonable best efforts to consult with Purchaser prior to any such actions and to consider Purchaser's input in those regards.

(f) Additional Financial Information. Within thirty (30) days following the end of each calendar month prior to Closing (other than the last month of each fiscal quarter and fiscal year) or forty-five (45) days in the case of a fiscal quarter or a fiscal year, Sellers shall deliver to Purchaser complete copies of the unaudited balance sheets and related unaudited

statements of income of Sellers with respect to the operation of the Hospitals for each month then ended, together with corresponding year-to-date amounts (the “Interim Financial Statements”), the presentation of which shall be consistent with the provisions of Section 5.10.

**Section 7.05. Notice to Purchaser.** From the Effective Date until the Closing; or the earlier termination of this Agreement in accordance with ARTICLE XI, Sellers shall (i) notify Purchaser in writing (with any such writing to include a written update to the Disclosure Schedules to the extent applicable) of any Material Adverse Effect of which Sellers have knowledge and (ii) promptly upon becoming aware of any material breach by Sellers of this Agreement, give written notice to Purchaser thereof. For the avoidance of doubt, the conditions to Purchaser’s obligations at the Closing set forth in Section 10.01 and Section 10.02 shall be read to give effect to any update to the schedules or other written notices delivered pursuant to this Section 7.05.

**Section 7.06. Collective Bargaining Agreements.** Subject to Section 7.04(a) and Section 7.04(e), from the Effective Date until the Closing Date, Seller shall not, without Purchaser’s prior written consent, which shall not unreasonably withheld or delayed amend the material conditions of employment or extend the term of any Collective Bargaining Agreement, except as Sellers reasonably determine are needed to maintain labor stability in furtherance of consummation of the Contemplated Transactions, or to avoid any strike or work stoppage. Notwithstanding the foregoing, to the extent DCHS does not amend the material conditions of employment or extend the term of any Collective Bargaining Agreement in accordance with this Section 7.06 because Purchaser did not consent to such amendment or extension, then any strike or work stoppage between the Effective Date and Closing related to or in connection with not amending or extending the terms of any Collective Bargaining Agreement because Purchaser did not consent shall not be a basis for a Material Adverse Effect. The parties recognize that DCHS’ failure to secure a modification to any Collective Bargaining Agreement, or to conclude a successor Collective Bargaining Agreement shall not be a breach of DCHS’ obligation under this Agreement, *provided* that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the Collective Bargaining Agreements during the period between the Effective Date and the Closing Date, DCHS and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce DCHS’ labor cost structure. Notwithstanding anything to the contrary contained in this Section 7.06, Purchaser is at all times entitled to negotiate with those unions that it has current collective bargaining agreements regarding global contracts.

**Section 7.07. Confidentiality.** Sellers agree that the Confidentiality Agreement will survive the execution and delivery of this Agreement and that the information, documents and instruments delivered to Purchaser by or on behalf of Sellers are “Confidential Information” (as defined in the Confidentiality Agreement) and shall continue to be protected under the terms of the Confidentiality Agreement. Sellers agree that prior to the Closing, they will maintain the confidentiality of all such Confidential Information delivered to Sellers by or on behalf of Purchaser in connection with the negotiation of this Agreement or in compliance with the terms, conditions and covenants of the Confidentiality Agreement. This Section 7.07 shall not prohibit the disclosure by Sellers or Purchaser of any information, instruments or documents that are required to be filed with Governmental Authorities by Sellers or Purchaser under applicable securities related Legal Requirements or in connection with the regulatory filings, applications

and notifications necessary or appropriate in connection with the Contemplated Transactions, so long as Purchaser or Sellers, as applicable, receives reasonable advance written notice from the other, or as is otherwise consistent with the due diligence or other transition matters associated with the Contemplated Transactions. In addition, any Party may disclose Confidential Information received from the other party in an Action brought by a Party hereto in pursuit of its rights or in exercise of its remedies hereunder.

**Section 7.08. Termination of Hospital Employees.** Immediately after the Closing, the Hospitals Employees shall cease to be employees of Sellers.

**Section 7.09. Exclusivity.** Sellers will not authorize or permit any of its respective officers, directors, partners or employees or any investment banker, financial advisor, attorney, accountant or other representative retained by it to, initiate, solicit, encourage (by way of furnishing access, non-public information or otherwise), negotiate or take any other action intended to facilitate any inquiries or the making of any proposal which constitutes, or may reasonably be expected to lead to, any proposal or offer to acquire all or any substantial part of the business or assets of the business (including the Hospitals), whether by merger, consolidation, purchase of assets, tender offer, joint venture, investment, exchange, lease or otherwise, whether for cash, securities or any other consideration or combination thereof, nor entertain, agree to, endorse, participate in any discussions or negotiations or recommend any such transaction. The restriction set forth in this Section 7.09 shall expire upon the termination of this Agreement.

**Section 7.10. Supplement to Disclosure Schedules.** From time to time prior to the Closing, Sellers shall have the right (but not the obligation) to supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof (each a “Schedule Supplement”), and each such Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; provided, however, that in the event such event, development or occurrence which is the subject of the Schedule Supplement constitutes or relates to something that has had a Material Adverse Effect, then Purchaser shall have the right to terminate this Agreement for failure to satisfy the closing condition set forth in Section 10.01 provided, further, that if Purchaser has the right to, but does not elect to terminate this Agreement within fifteen (15) Business Days of its receipt of such Schedule Supplement, then Purchaser shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such matter under Section 10.01.

**Section 7.11. D&O Insurance.** Prior to Closing, DCHS shall obtain a prepaid six (6) year extended reporting endorsement tail insurance policy (the “D&O Insurance”) for claims made on or after the Closing from Sellers’ current director and officer liability insurance carrier or another carrier with the same or better credit rating, for the persons who, as of the Effective Date, are covered by Sellers’ existing D&O Insurance with terms at least as favorable as Sellers’ existing D&O Insurance with respect to matters existing or occurring at or prior to the Closing.

**Section 7.12. Fiduciary Liability Insurance.** Prior to Closing, DCHS shall obtain a prepaid six (6) year extended reporting endorsement tail insurance policy (the “Fiduciary Liability Insurance”) for claims made on or after the Closing Date with respect to matters existing or occurring prior to the Closing Date from DCHS’ current fiduciary liability insurance carrier or another carrier with the same or better credit rating, for the persons who, as of the Effective Date,

are covered by DCHS' existing Fiduciary Liability Insurance with terms at least as favorable as DCHS' existing Fiduciary Liability Insurance with respect to matters existing or occurring at or prior to the Closing Date.

**Section 7.13. Church Plans.**

(a) Effective as of the Closing Date, DCHS shall transfer sponsorship of the Defined Benefit Church Plan and the Defined Contribution Church Plans to Purchaser. DCHS shall take all necessary steps to effect a complete and total substitution of Purchaser for DCHS under the Defined Benefit Church Plan and the Defined Contribution Church Plans, including a substitution of Purchaser as settlor under the trusts of which DCHS is settlor and which are maintained as the funding media for benefits provided under the Defined Benefit Church Plan and the Defined Contribution Church Plans.<sup>12</sup>

(b) To the extent required by Section 4204(a)(1)(C) of ERISA, if a complete or partial withdrawal occurs with respect to either of the Multiemployer Plans within the first five plan years of such Multiemployer Plan beginning after the Closing Date, and Purchaser fails to pay any withdrawal liability resulting from such withdrawal, DCHS shall be secondarily liable to such Multiemployer Plan for the withdrawal liability it would have had to such Multiemployer Plan but for the provisions of Section 4204 of ERISA.

**Section 7.14. Closing Conditions.** Prior to the Closing, Sellers shall use commercially reasonable efforts to cause the conditions specified in ARTICLE VII and ARTICLE IX over which Sellers have reasonable control to be satisfied as soon as reasonably practicable, but in any event prior to the Closing. Without limiting the preceding, Sellers shall use their reasonable best efforts to obtain the Church Approvals addressed at Section 9.07 as soon after the Effective Date as is reasonably possible.

**Section 7.15. Interim Consulting Agreement.** In an effort to effectuate a smooth transition between Sellers and Purchaser, Sellers hereby engage Purchaser at no cost for consulting services from the time of execution of this Agreement until Closing to allow and aid in improving cost effectiveness and patient care quality metrics consistent with Purchaser's existing policies and protocols. Sellers will use diligent efforts to cooperate with Purchaser and Sellers will consider in good faith Purchaser's reasonable recommendations, subject at all times to DCHS' ultimate authority and control over the Business and the Hospitals. In connection with such cooperative arrangements, starting immediately following the Effective Date, Sellers and Purchaser will work reasonably together to jointly develop, and consider a workforce adjustment or realignment plan ("Workforce Plan"), subject to applicable notice and other legal requirements. Also in support of cooperative efforts, Purchaser shall have reasonable access to the Business and their records, offices, facilities, and personnel (including without limitation medical staff). In addition, Sellers will reasonably cooperate and work with Purchaser in support of Purchaser's continuing diligence and development of a complete strategic plan ("SGM Strategic Plan") for its

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<sup>12</sup> -Note to SGM: Please confirm that Dr. Chaudhuri's other hospital operations are owned by SGM or a direct or indirect subsidiary of SGM in the control group.

<sup>12</sup> Note to DCHS: More information on the SGM and its relationship with the other hospital operating companies will be separately provided.

subsequent operation of the Business, to help Purchaser be as prepared for the transition of the Hospital Businesses at Closing as is reasonably possible. Notwithstanding the foregoing, Sellers shall have no obligation to follow the consulting advice of Purchaser as discussed in this [Section 7.15](#) prior to Closing. The Parties agree that, promptly upon Purchaser's request, they shall develop and implement a separate Consulting Services Agreement further detailing and memorializing the consulting arrangements summarized in this Section, to be consistent with the provisions of this Section, to remain in place until Closing or termination of this Agreement.

**Section 7.16. [\[DCHS Medical Foundation\]](#).** Sellers will reasonably cooperate with Purchaser, and shall cause DCHS Medical Foundation to cooperate with Purchaser, such that, concurrent with the Closing, Sellers will, or will cause DCHS Medical Foundation to, (i) replace DCHS with Purchaser or such Person as specified by Purchaser as the sole member of DCHS Medical Foundation and (ii) modify the articles and bylaws DCHS Medical Foundation, and take such other steps as needed under the California Nonprofit Corporation Law, to convert DCHS Medical Foundation from a religious nonprofit corporation to a public benefit nonprofit corporation. Purchaser acknowledges that the status of DCHS Medical Foundation as an organization described in Section 501(c)(3) of the Code is contingent on listing in the Official Catholic Directory, eligibility for which will end upon change of membership of DCHS Medical Foundation and accordingly Purchaser will be solely responsible for obtaining determinations of federal and state tax exemptions if Purchaser intends to maintain DCHS Medical Foundation's status as a tax-exempt organization. [Accordingly, Sellers will cooperate with Purchaser, and cause DCHS Medical Foundation to cooperate with Purchaser to develop and submit a new federal tax exemption application for the DCHS Medical Foundation on or prior to Closing, and take such other steps reasonably requested by Purchaser in order for the DCHS Medical Foundation to seek federal tax exemption independent of its status as a listed organization in the Official Catholic Director. In addition, Sellers shall, and shall cause their Affiliates to, waive the requirements of any directed donations made, or any similar charitable trust rights to which they are beneficiaries to the extent necessary to eliminate restrictions on the DCHS Medical Foundation to convert from a religious nonprofit to a public benefit nonprofit consistent with the above-stated goals, and to eliminate any restrictions tied to religious use or disposition of proceeds and assets to religious purposes or entities.\]](#)<sup>13</sup>

**Section 7.17. [Measure A Cooperation](#).** Sellers shall use reasonable efforts to cooperate with Purchaser's efforts to obtain the commitment by the County of San Mateo to provide funds to Purchaser for Seton Medical Center pursuant to its authority under Measure A, at least equal to an annual amount of Fifteen Million Dollars (\$15,000,000) for the remaining term of the Measure A program through June 30, 2023 to Seton Medical Center including those made pursuant to the Measure A Agreement prior to closing, for uses of the type permitted in the existing Measure A Agreement, provided that Purchaser meets the conditions for such payment consistent with, or no more burdensome than those pursuant to, the existing Measure A Agreement.

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<sup>13</sup> ~~-To discuss with SGM—open business issue.~~ [Note to DCHS – it appears that SGM will not need for the DCHS Affiliate to continue sponsoring the DCHS Medical Foundation post-closing, but will need assistance and cooperation pre-closing to be in a position to seek independent exemption on and after closing.](#)



**Section 7.18. Resolution of SRDP Matter.** Sellers shall use their reasonable efforts to resolve the SRDP Matter prior to Closing, in consultation with and with the prior consent of Purchaser, which consent shall not be unreasonably withheld, qualified or delayed.

**Section 7.19. WARN Compliance.** Notwithstanding any provision to the contrary contained in this Agreement, Sellers shall take any steps reasonable necessary in their sole discretion to comply with the WARN Act requirements, to the extent applicable to any terminations of Hospital Employees at or prior to Closing, and Purchaser shall cooperate with Seller with respect thereto. In any case, however, Sellers shall provide such WARN Act notices in consultation with, and in response to reasonable requests by, Purchaser no later than sixty (60) days prior to the initially targeted Closing Date.

## **ARTICLE VIII.**

### **COVENANTS OF PURCHASER**

**Section 8.01. Required Governmental Approvals and Accrediting Approvals; Change of Ownership Applications.**

(a) Subject to the terms and conditions of this Agreement, from the Effective Date to the Closing, or the earlier termination of this Agreement pursuant to ARTICLE XI, Purchaser shall use reasonable efforts to cause to be received by the Parties all Governmental Approvals, and to do or cause to be done all other things necessary, proper or advisable, in order to consummate and make effective the Contemplated Transactions as soon as practicable following the Effective Date including satisfaction, but not waiver, of the conditions set forth in ARTICLE IX and ARTICLE X, including, without limitation, the following:

(i) Purchaser shall use reasonable efforts to secure as promptly as practicable before the Closing Date, and, as reasonably requested by Sellers, aid Sellers with respect to assisting Purchaser in securing, all Governmental Approvals including the AG Approval; and

(ii) Purchaser shall provide such other information and communications to Governmental Authorities and accrediting and certifying bodies as Sellers or such authorities or bodies may reasonably request.

(b) Purchaser shall act diligently and reasonably to complete change of ownership applications and notices with respect to all Applications. Purchaser shall complete and file all Applications that are required by a Governmental Authority or by a third party payor to be filed by the transferor. Promptly after the filing of each Application, Purchaser shall provide one full copy of such Application to Sellers. Purchaser shall pay the entirety of any fees charged by a Governmental Authority in connection with the filing of any Application including, without limitation, fees charged in connection with Applications that must be filed by the transferor.

(c) Within fifteen (15) days after the Effective Date, Purchaser shall file all necessary regulatory filings set forth on Schedule 7.01(b)(i), with the exception of the necessary filings with the California Department of Health (the “DPH Approvals”~~as~~”), CMS filings and Pharmacy Board filings, as further set forth on Schedule 7.01(b)(ii), which shall be filed no later

than ten (10) Business Days after the AG Approval. Schedule 7.01(b)(i) shall include at a minimum the following:

(i) The Antitrust Filings with the appropriate Governmental Authority designated by law to receive such filings. As promptly as is practicable after receiving any request from the U.S. Department of Justice or the U.S. Federal Trade Commission for information, documents, or other materials in connection with the review of the Antitrust Filings, Purchaser shall use reasonable efforts to comply with such request. Purchaser shall cooperate with Sellers in connection with resolving any inquiry or investigation by the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Antitrust Filings. Purchaser shall promptly inform Sellers of any communication with, and any proposed understanding, agreement or undertaking with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Antitrust Filings. Purchaser shall give Sellers reasonable advance notice of, and the opportunity to participate in any inquiry or investigation by, or any meeting or conference (whether by telecommunications or in person) with, the U.S. Department of Justice or the U.S. Federal Trade Commission relating to the Antitrust Filings. Purchaser shall deliver to Sellers within five (5) Business Days following the filing thereof, a complete and accurate copy of any Antitrust Filing filed by Purchaser. All fees required to be paid to the U.S. Federal Trade Commission and any other Governmental Authority in connection with the Antitrust Filings shall be paid solely by Purchaser at the time of filing.

#### **Section 8.02. Employees.**

(a) Purchaser (directly or through its Affiliates) shall, effective as of the Closing Date, assume each of the employment agreements set forth on Schedule 2.01(t) or offer to employ (whether for employees who are full-time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to DCHS' and its Affiliates' policies as set forth on Schedule 8.02(a)(ii), the Family and Medical Leave Act of 1993 or other similar Legal Requirements), a substantial portion of the Hospital Employees who submit full and complete applications, and pass all screening and background checks as may be required by Purchaser in compliance with all applicable Legal Requirements and Collective Bargaining Agreements (as further addressed below), to include the following individuals: (i) unrepresented employees of the Hospitals, the DCHS Medical Foundation, CBS and the system office employees (excluding the Senior Leaders), and (ii) employees working under a Collective Bargaining Agreement, or otherwise represented by a union for purposes of collective bargaining with DCHS (collectively, (i) and (ii) herein, the "Management and Other Employees"). To the extent any of the Senior Leaders or Management and Other Employees do not have employment agreements, all those who receive offers of employment, will be offered employment effective as of the Closing Date.

(b) Purchaser agrees to adhere to and abide by the severance obligations (and all other obligations) set forth in the employment agreements of the Senior Leaders and Management and Other Employees, and, where no such written agreement exists, abide by DCHS' policies and procedures set forth on Schedule 8.02(a)(ii), to the extent applicable, with respect to severance for a period of eighteen (18) months from the Closing Date, provided such employees are Hired Employees. Notwithstanding the foregoing, any Senior Leader or Management and

Other Employees who executes a new written employment agreement with Purchaser will be entitled only to the severance pay benefits set forth in such new employment agreements, and consequently such Senior Leader or Management and Other Employees will no longer be entitled to severance pay benefits set forth in their DCHS employment agreement or DCHS' severance pay policies, as the case may be.

(c) To the extent Purchaser does not adhere to and pay the severance obligations owed to the Senior Leaders or other certain system employees as set forth on Schedule 8.02(c) in an amount consistent with DCHS' or its Affiliates severance pay obligations described in Section 8.02(b), DCHS shall pay any amounts due and owing to such employee out of the Severance Reserve Amount. Eighteen (18) months after the Closing, the remaining Severance Reserve Amount, if any, shall be released to Purchaser in accordance with the Holdback Escrow Agreement.

(d) Each Hospital Employee who accepts an offer of employment with Purchaser as of or after the Closing Date, including the Senior Leaders and Management and Other Employees, shall be referred to in this Agreement as a "Hired Employee." On and after the Closing, Hired Employees shall be eligible for a medical and hospital plan sponsored by Purchaser (or its Affiliate), and such other benefits as otherwise offered by Purchaser, subject to any requirements as may be provided under a Collective Bargaining Agreement, including any expired Collective Bargaining Agreement in which a duty to bargain still exists, if applicable. ~~Each~~ [Hired Employee] ~~Employees~~ will generally receive ~~substantially the same~~ similar salary or wages as were provided by DCHS prior to the Closing Date.<sup>14</sup>

(e) Notwithstanding the foregoing, Purchaser's obligation to hire any Hospital Employee shall be conditioned upon satisfactory completion of an employment application (including authorization for Purchaser to review their employment file with Sellers), and passing each background check, drug testing and other customary screenings performed with respect to prospective employees of Purchaser.

(f) Purchaser shall cause each Hired Employee to receive service credit for all of his or her years of service with Sellers and Sellers' predecessors in interest for purposes of determining eligibility, vesting and the amount of holiday, vacation or sick pay to which each such Hired Employee is entitled under the applicable benefit plans, programs and arrangements of Purchaser; provided that Purchaser will not honor any vested paid time off for any Hired Employees or other employees of Sellers which, for whatever reasons, receive cash compensation, at Closing, for such vested paid time off. Purchaser recognizes that those Hospital Employees who do not become Hired Employees shall need to be paid their paid time-off at Closing.

(g) Purchaser will indemnify, defend and hold Sellers harmless from and against any loss, damage, liability, claim, cost or expense (including, without limitation, reasonable attorneys' fees) that may be incurred by, or asserted against, Sellers under the WARN Act or any similar state or local law to the extent it involves a past or present employee of Sellers and concerns acts or omissions occurring, in whole or in part, on or after the Closing Date.

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<sup>14</sup> This issue remains open, with the answer deferred pending resolution of the key economic issues tied to the pension issues.

Purchaser shall not cause a violation of the WARN Act, in whole or in part, during the 91 days after Closing; provided that nothing herein is intended to, or shall, relieve Sellers of their obligations to provide any WARN Act notices and take other required WARN Act compliance steps, required for termination of any Hospital Employees at or prior to Closing.

(h) Purchaser shall assume, effective at Closing, each Collective Bargaining Agreement and shall handle the rehiring of the Hospital Employees represented under such Collective Bargaining Agreements consistent with all applicable terms of such Collective Bargaining Agreements.

(i) Purchaser shall cause all pre-existing conditions that any Hired Employee or his or her covered dependents has as of the Closing Date, and all proof of insurability provisions to which such employee or dependent would be otherwise subject, to be waived or satisfied for all conditions covered by any plan maintained by Purchaser or its Affiliates in which any such employee participates, in each case to the same extent waived or satisfied under the corresponding Sellers' Plan. Purchaser shall cause all waiting periods applicable to newly-hired employees under each plan maintained by Purchaser or its Affiliates to be waived with respect to Hired Employees and their covered dependents to the extent that any such waiting periods were waived or satisfied under the corresponding Sellers' Plan.

(j) Purchaser shall cause any eligible expenses incurred by a Hired Employee and his or her covered dependents during the portion of the plan year prior to the Closing Date to be accounted for in the corresponding new or existing employee benefit plan of Purchaser or its Affiliates for purposes of satisfying all deductibles, coinsurance and maximum out-of-pocket requirements applicable to such employee and/or his or her covered dependents for the plan year in which the Closing Date occurs if such amounts had been paid for the corresponding benefit in accordance with such new or existing employee benefit plan.

(k) Purchaser will make available group health plan continuation coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, to employees and former employees of Sellers who are eligible for such coverage.

(l) The parties hereto acknowledge and agree that all provisions contained in this Section 8.02 are included for the sole benefit of the respective parties hereto and shall not create any right, including any third party beneficiary right, (i) in any other person, including any employee, former employee or any participant or any beneficiary thereof in any Seller Plan or employee benefit plan, program or arrangement of Purchaser, or (ii) to employment or continued employment or any term or condition of employment with Seller or Purchaser, any of the subsidiaries or affiliates thereof. Nothing contained in this Section 8.02 is intended to be or shall be considered to be an amendment or adoption of any plan, program, agreement, arrangement or policy of Seller, Purchaser or any subsidiary or affiliate thereof, nor shall it interfere with or limit Purchaser's right to amend, modify or terminate any Seller Plan or any other benefit or compensation plan, program, agreement, policy, contract or arrangement or to terminate the employment of any Hospital Employee for any reason, except as otherwise permitted by the applicable Collective Bargaining Agreement, provided that the Purchaser shall be subject to the provisions of Section 8.02.

### **Section 8.03. Pension Liabilities.**

(a) Effective as of the Closing Date, Purchaser shall assume sponsorship of the Defined Benefit Church Plan and the Defined Contribution Church Plans from DCHS. Purchaser shall take all necessary steps to effect a complete and total substitution of Purchaser for DCHS under the Defined Benefit Church Plan and the Defined Contribution Church Plans, including a substitution of Purchaser as settlor under the trusts of which DCHS is settlor and which are maintained as the funding media for benefits provided under the Defined Benefit Church Plan and the Defined Contribution Church Plans. Purchaser shall amend the Defined Benefit Church Plan and the Defined Contribution Church Plans as necessary to satisfy the requirements of ERISA and the Code and shall administer the plans in accordance with the requirements of ERISA and the Code, including all requirements applicable to a plan that is not a non-electing “church plan” as defined in Section 3(33) of ERISA and Section 414(e) of the Code. Purchaser shall provide funding for the Defined Benefit Church Plan in accordance with the requirements of ERISA and the Code. Purchaser shall assume responsibility for all liabilities under the Defined Benefit Church Plan as of the Closing Date. Purchaser shall also assume DCHS’ obligations under the Collective Bargaining Agreements with existing unions with respect to the Defined Benefit Church Plan and the Defined Contribution Church Plans. For the avoidance of doubt, Purchaser shall be responsible for making all contributions necessary to satisfy the funding requirements of ERISA and the Code with respect to benefits accrued under the Defined Benefit Church Plan as of the Closing Date, whether the obligation to make such contributions results from the conversion of the Defined Benefit Church Plan to a plan that is not a “church plan” or a determination that the Defined Benefit Church Plan did not qualify as a “church plan” prior to the Closing Date as described in Section 5.12(d); provided nothing herein shall require Purchaser to assume Excluded Liabilities.

(b) Purchaser shall take the following actions with respect to the Multiemployer Plans to which DCHS has made contributions prior to the Closing Date pursuant to either the Collective Bargaining Agreements applicable to the Hospital Employees, or collective bargaining relationships between DCHS or its Affiliates and any unions representing some or all of their employees.

(i) Purchaser shall cooperate with DCHS as reasonably requested to take any actions necessary with respect to the assumption of DCHS’ obligations under the Multiemployer Plans as required by Collective Bargaining Agreements and collective bargaining relationships with any existing unions, including obtaining a bond (or waiver of the bond requirement) and otherwise satisfying the purchaser obligations of ERISA Section 4204. Purchaser agrees to continue to contribute under the terms of such Multiemployer Plans for substantially the same number of contribution base units for which DCHS has an obligation to contribute to the Multiemployer Plans immediately prior to the Closing.

(ii) Immediately following the Closing, Purchaser agrees to continue to contribute under the terms of such Collective Bargaining Agreements or as required by the National Labor Relations Act or the terms of the Multiemployer Plans for substantially the same number of contribution base units for which DCHS has an obligation to contribute to the Multiemployer Plans immediately prior to the Closing, and shall not, to the extent required by Collective Bargaining Agreements or as required by the National Labor Relations Act or the terms of the

Multiemployer Plans, cause a partial or complete withdrawal from either of the Multiemployer Plans to occur for a period of at least five plan years, commencing at the beginning of the first plan year after the Closing Date.

(iii) Unless an exemption or variance is obtained in accordance with PBGC procedures, Purchaser shall provide to both of the Multiemployer Plans for a period of five plan years, commencing with the first plan year of each of such plans beginning after the Closing Date, a bond issued by a surety company that is an acceptable surety for purposes of Section 412 of ERISA in the amount described below, or Purchaser shall establish an escrow fund held by a bank or similar financial institution satisfactory to such plan in the amount described below. Such amount shall be equal to the greater of: (A) the average annual contributions required to be made by DCHS with respect to the operations under the plan for the three plan years of such plan next preceding the plan year in which the Closing occurs; or (B) the annual contribution DCHS was required to make with respect to operations under such plan for the last plan year prior to the plan year in which the Closing occurs, which bond or escrow shall provide for payment to such plan if Purchaser withdraws from such plan or fails to make a contribution to such plan when due at any time during the first five plan years beginning after the Closing.

(iv) In the event of the partition of one or more the Multiemployer Plans, Purchaser shall establish and maintain one or more single-employer defined benefit plans to which the assets and liabilities of that portion of the affected Multiemployer Plan associated with benefits attributable to service with DCHS shall be transferred.

(c) Purchaser shall indemnify, defend and hold harmless Sellers and their Affiliates (including for this purpose any Person, whether or not otherwise an Affiliate, that is determined to have ever been a member of the same “controlled group” as DCHS for purposes of Section 414(b), (c), (m) or (o) of the Code or Section 302(d)(3) or 4001(b)(1) of ERISA) from any liability, resulting from any failure by Sellers to satisfy an obligation to fund the Defined Benefit Church Plan, whether the obligation results from an obligation to convert the Defined Benefit Church Plan to a plan that is not a “church plan” or from a determination that the Defined Benefit Church Plan did not qualify as a “church plan” prior to the Closing Date or from an obligation to fund the Defined Benefit Church Plan, or otherwise; or to satisfy an obligation to contribute to any of the Multiemployer Plans or to pay withdrawal liability to any of the Multiemployer Plans, including any obligation arising under Section 7.13(b). Each such controlled group member is an intended third party beneficiary of Purchaser’s obligation under this Section 8.02(a).

**Section 8.04. Consents to Assignment.** Purchaser shall cooperate with Sellers as reasonably requested to obtain any consents to assign the Contracts and Leased Real Property. Without Sellers’ prior written consent, Purchaser shall not seek consent from a party to assignment of any specific Contract.

**Section 8.05. Contact with Unions.** Purchaser shall not directly or indirectly contact or otherwise communicate with any union in connection with the Contemplated Transactions without the prior written consent of Sellers until after the Closing Date except as arranged and attended by Sellers or Sellers’ representatives. Sellers agree that, upon Purchaser’s request to

communicate or meet with any union, Sellers shall diligently make arrangements to schedule, and make a representative available, to attend any such union meeting or communication so requested by purchaser. Prior to agreeing to any changes to the Collective Bargaining Agreements between the Effective Date and the Closing Date, Sellers shall (i) provide Purchaser with the opportunity to evaluate and comment on any such changes, and (ii) shall use reasonable efforts to cooperate with Purchaser in connection with the terms agreed to with the unions prior to Closing. Notwithstanding the foregoing, any terms of the Collective Bargaining Agreements agreed to during negotiations with the unions prior to Closing shall be subject to DCHS' final approval.

**Section 8.06. Confidentiality.** Purchaser agrees that, notwithstanding the termination of the Confidentiality Agreement, the Parties' rights and obligations under the Confidentiality Agreement will survive the execution and delivery of this Agreement and that the information, documents and instruments delivered to Purchaser by or on behalf of Sellers are "Confidential Information" (as defined in the Confidentiality Agreement) and shall continue to be protected under the terms of such Confidentiality Agreement. Purchaser agrees that prior to the Closing, it will maintain the confidentiality of all such Confidential Information delivered to it by or on behalf of Sellers in connection with the negotiation of this Agreement or in compliance with the terms, conditions and covenants of the Confidentiality Agreement. This Section 8.06 shall not prohibit the disclosure by Purchaser or Sellers of any information, instruments or documents that are required to be filed with Governmental Authorities by Purchaser or Sellers under applicable securities related Legal Requirements or in connection with the regulatory filings, applications and notifications necessary or appropriate in connection with the Contemplated Transactions, so long as Purchaser or Sellers, as applicable, receives reasonable advance written notice from the other, or as is otherwise consistent with the due diligence or other transition matters associated with the Contemplated Transactions. In addition, any Party may disclose Confidential Information received from the other party in an Action brought by a Party hereto in pursuit of its rights or in exercise of its remedies hereunder.

**Section 8.07. Waiver of Bulk Sales Law Compliance.** Purchaser hereby waives compliance by Sellers with the requirements of Article 6 of the Uniform Commercial Code as in force in any state in which the Transferred Assets are located and all other similar Legal Requirements applicable to "bulk sales" and "bulk transfers".

**Section 8.08. Subsequent Sale.** If Purchaser decides to sell or otherwise transfer the Hospitals or a material portion of the Transferred Assets, or consolidate or merge the Hospitals with any other Person, during a period when Purchaser is performing any covenants pursuant to this ARTICLE VIII, Purchaser shall ensure that such subsequent owner of the Hospitals agrees to fulfill Purchaser's obligations under this ARTICLE VIII.

**Section 8.09. Charity Care; Other Related Matters.**

(a) Purchaser agrees to treat indigent patients and to provide charity care in the service area of the Hospitals, and develop and maintain charity care policies, in compliance with all applicable Legal Requirements governing such matters.

(b) To support adequate access to Medicare and Medi-Cal patients, for a period of not less than five (5) years after Closing, Purchaser will use commercially reasonable efforts to



continue to operate the [Hospitals]<sup>15</sup> as general acute care hospitals under California Health and Safety Code Section 1250 and shall continue to offer an open emergency room, subject to the availability of physicians on the respective Hospital's medical staff qualified to support such services and subject further to such changes as may be necessary or appropriate based on community needs, market demand and the financial viability and commercial reasonableness of such services in the context of the then applicable health care environment, except as provided otherwise herein. Purchaser shall adopt a policy to reasonably provide for an appropriate medical screening examination to any patient presented to the emergency room who has a medical emergency, or who, in the judgment of the staff physician, has an immediate emergency need. No such patient shall be turned away because of age, race, religion, gender, or sexual orientation. Notwithstanding the foregoing, however, Purchaser's commitments to keep the Hospitals operational, to provide access to care and related covenants do not require Purchaser to build new, or rebuild existing, Hospital buildings in order to continue such operations, including without limitation to meet seismic standards or requirements. However, the qualification in the preceding sentence will not apply to Seton Medical Center if Seton Medical Center shall have obtained a binding commitment by the County of San Mateo to provide funds to Purchaser for Seton Medical Center pursuant to its authority under Measure A, at least equal to an annual amount of Fifteen Million Dollars (\$15,000,000)) for the remaining term of the Measure A program through June 30, 2023 to Seton Medical Center including those made pursuant to the Measure A Agreement prior to Closing, for uses of the type permitted under the existing Measure A Agreement, including without limitation for seismic compliance projects costs, provided that Purchaser meets the conditions for such payment consistent with, or no more burdensome than those pursuant to, the existing Measure A Agreement. Notwithstanding the foregoing, the preceding commitments shall not apply to Seton Medical Center Coastsides, which does not currently operate as a full service acute care hospital site.

(c) For at least five (5) years after Closing, Purchaser will maintain the existing chapels at the Hospitals to be used for the celebration of Catholic mass and other religious services, and provide an appropriately staffed and funded pastoral care service at the Hospitals.

(d) For purposes of the commitments in this Section 8.09, Purchaser shall not be in breach of these covenants based on a closure of any Hospital, in whole or in part, even if it affects the continued operation of, and access to, the Hospital's emergency department and other services, as the result of any retrofit, remediation, construction or similar project at such Hospital, or the closure of a Hospital provided such closure is for the purpose of replacement with a new acute care hospital or portion thereof.

**Section 8.10. Closing Conditions.** Prior to Closing, Purchaser will use commercially reasonable efforts to cause the conditions specified in ARTICLE VIII and ARTICLE X over which Purchaser has reasonable control to be satisfied as soon as reasonably practicable, but in any event prior to Closing.

**Section 8.11. Intellectual Property.**

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<sup>15</sup> Note to SGM: We will need to clarify in the post-closing covenants that the term "Hospitals" includes the business of the hospitals post-closing as opposed to the shell entities that will remain after the Closing.



(a) Purchaser covenants not to use the marks identified in Schedule 8.11(a) (the “Restricted Names”) in any manner and in any medium (i) from and after the end of the Transition Period with respect to Building Signs; and (ii) from and after the Closing Date in all other cases. Notwithstanding the foregoing, Purchaser may use variations of the Restricted Names that incorporate the name “Strategic Global Management,” or an alternative system name distinct from DCHS and which shall be reasonably acceptable to Sellers solely as set forth in Schedule 8.11(b) or as otherwise pre-approved in writing by Sellers (the “Permitted Names”; together with any abbreviations, variations, logos or symbols associated or used in connection with the Permitted Names, Transferred Assets or the Hospitals, the “Transferred Marks”). For avoidance of doubt, any and all use of the Transferred Marks in any manner and in any medium (including, without limitation, use in domain names, websites, signage, and any marketing or promotional materials) must include the name “Strategic Global Management” or an alternative system name distinct from DCHS and which shall be reasonably acceptable to Sellers.

(b) During the period commencing at the Effective Date and continuing for two hundred seventy (270) days thereafter (the “Transition Period”), Purchaser shall use commercially reasonable efforts to promptly (i) remove all exterior and interior fixtures that contain or comprise building signs displaying the Restricted Marks (including at all hospitals, offices, buildings and other Real Property) (“Building Signs”) or (ii) change all Building Signs to conform to the Permitted Names.

(c) Purchaser covenants not to use the Retained Marks or any marks or domain names that are confusingly similar to the Retained Marks in any manner and in any medium.

(d) Purchaser shall on the Closing Date, discontinue the use of all corporate and trade names that contain any Restricted Marks or Retained Marks (including, without limitation, the DCHS Marks), including by filing appropriate name change amendments with the California Secretary of State, and shall not subsequently change such names to (or otherwise use or employ) any names which contain any Restricted Marks or Retained Marks.

(e) This Section 8.11 shall survive consummation of this Agreement and Closing in perpetuity.

**Section 8.12. Capital Commitment.** Purchaser covenants and agrees that it shall commit not less than an aggregate of Two Hundred Million Dollars (\$200,000,000) over the five (5) years following the Closing in capital related to improvements, capital or major equipment and capital projects at the Hospitals and/or the Business and the development of other strategic assets that benefit the Hospitals, the Business and their surrounding communities.

## ARTICLE IX.

### CONDITIONS TO SELLERS' OBLIGATIONS AT CLOSING

Sellers' obligations to sell the Transferred Assets and to close the Contemplated Transactions are subject to the fulfillment of, or, to the extent permitted by applicable Legal Requirements, waiver by Sellers of each of the following conditions:

**Section 9.01. Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement that are qualified by materiality, Material Adverse Effect or a similar material qualifier will be true and correct in all material respects at the Closing with the same force and effect as if made as of the Closing Date, in each case, other than such representations and warranties that expressly speak only as of a specific date or time, which will be true and correct in all material respects as of such specified date or time, and all other representations and warranties of Purchaser contained in this Agreement are true and correct except where failure of such representations and warranties to be true and correct would not, in the aggregate, result in a Material Adverse Effect; provided, however, that this Section 9.01 shall not apply to such inaccuracies that arise as a result of (a) occurrences specifically contemplated by this Agreement or (b) actions permitted by this Agreement.

**Section 9.02. Performance.** Purchaser will have performed and complied with, in all material respects, all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by Purchaser at or prior to the Closing.

**Section 9.03. Absence of Litigation.** No Action will be pending which seeks a Government Order, nor will there be any Government Order in effect, (a) which would prevent consummation of any of the Contemplated Transactions or (b) which would require any of the Contemplated Transactions to be rescinded following their consummation.

**Section 9.04. Governmental Approvals.** Sellers shall have obtained the Governmental Approvals set forth at Section 7.01 and on Schedules 7.01(b)(i) and 7.01(b)(ii).

**Section 9.05. Antitrust Approvals.** The waiting period required pursuant to the HSR Act shall have expired or been terminated and any approvals required in connection with the HSR Act shall have been obtained. All approvals, authorizations or clearances required under any other applicable Antitrust Laws with respect to the Antitrust Filings shall have been obtained and all requirements thereunder shall have been satisfied.

**Section 9.06. Collective Bargaining Agreements.** Purchaser shall have agreed to assume, effective at Closing, each Collective Bargaining Agreement.

**Section 9.07. Church Approvals.** Sellers shall have obtained the necessary approvals under applicable law of the Roman Catholic Church ("Church Law") for the alienation of the Real Property and any other aspects of the Contemplated Transactions subject to Church Law have been obtained and are in force and effect (collectively, the "Church Approvals").

**Section 9.08. Other Instruments and Documents.** Purchaser will have delivered to Sellers each of the instruments and documents reasonably required to be delivered to it pursuant to Section 4.11.

## **ARTICLE X.**

### **CONDITIONS TO PURCHASER'S OBLIGATIONS AT CLOSING**

Purchaser's obligations to purchase the Transferred Assets and to close the Contemplated Transactions are subject to the fulfillment of, or, to the extent permitted by applicable Legal Requirements, waiver by Purchaser of each of the following conditions:

**Section 10.01. Representations and Warranties.** The representations and warranties of Sellers contained in this Agreement that are qualified by materiality, Material Adverse Effect, substantial compliance or a similar materiality qualifier will be true and correct in all material respects at the Closing with the same force and effect as if made as of the Closing Date, other than such representations and warranties that expressly speak only as of a specific date or time, which will be true and correct in all material respects as of such specified date or time, and all other representations and warranties of Sellers contained in this Agreement are true and correct except where failure of such representations and warranties to be true and correct would not, in the aggregate, result in a Material Adverse Effect; *provided, however*, that this Section 10.01 shall not apply to inaccuracies that arise as a result of (a) occurrences specifically contemplated by this Agreement, (b) actions permitted by this Agreement or (c) any breach or inaccuracy of a representation or warranty that is the result of any insurable damage to, loss or destruction of a Transferred Asset (whether by fire, theft, or other cause of casualty event).

**Section 10.02. Performance.** Sellers will have performed and complied with, in all material respects, all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by Sellers at or prior to the Closing.

**Section 10.03. Absence of Litigation.** No Action will be pending which seeks a Government Order, nor will there be any Government Order in effect, (a) which would prevent consummation of any of the Contemplated Transactions, (b) which would require any of the Contemplated Transactions to be rescinded following their consummation or (c) which has or would reasonably be expected to result in a Material Adverse Effect.

**Section 10.04. Governmental Approvals.** Seller and Purchaser shall have received documentation or reasonable assurance the Governmental Approvals as addressed at Section 7.01 and set forth on Schedules 7.01(b)(i) and 7.01(b)(ii), including without limitation the AG Approval, have been obtained to Purchaser's reasonable satisfaction.

**Section 10.05. Antitrust Approvals.** All filings required to be made and notices required to be given pursuant to the HSR Act shall have been made, and the waiting period required pursuant to the HSR Act shall have expired or been terminated and any approvals required in connection with the HSR Act shall have been obtained. All approvals, authorizations or clearances required under any other applicable Antitrust Laws with respect to the Antitrust Filings shall have been obtained and all requirements thereunder shall have been satisfied.

**Section 10.06. Title Matters.** The Real Property (i) shall not be or have become encumbered or subject to any matter that is not a Permitted Exception or otherwise agreed to by Purchaser, and (ii) Purchaser shall have received reasonable assurance from the Title Company that the title policies, including a customary survey endorsement in favor of Purchaser, relating to the Hospitals that shall be issued as of the Closing Date (each a “Title Policy”) in accordance with the provisions of this Section 10.05. Each Title Policy shall (a) name Purchaser as the insured and (b) commit to insure good and marketable fee simple title to such Real Property in Purchaser’s name, subject only to the Permitted Exceptions.

**Section 10.07. Other Instruments and Documents.** Sellers shall have delivered to Purchaser each of the instruments and documents reasonably required to be delivered by it pursuant to Section 4.10.

## ARTICLE XI.

### TERMINATION

**Section 11.01. Termination.** This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the Parties to this Agreement;
- (b) by Sellers in the event of a failure of any condition set forth in ARTICLE IX if failure has not been (i) waived in writing by Sellers or (b) cured by Purchaser within thirty (30) calendar days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach; provided, however, that Sellers shall not be permitted to terminate the Agreement pursuant to this Section 11.01(b) if such failure was caused by Sellers or if Sellers are in material breach of this Agreement;
- (c) by Purchaser in the event of a failure condition set forth in ARTICLE X if such failure has not been (i) waived in writing by Purchaser or (ii) cured by Sellers within thirty (30) calendar days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach; provided, however, Purchaser shall not be permitted to terminate this Agreement pursuant to this Section 11.01(c) if such failure was caused by Purchaser or if Purchaser is in material breach of this Agreement ; or
- (d)
  - (i) Subject to Section 11.01(d)(ii) by Purchaser or Sellers if the Closing has not occurred on or before the date (the “Outside Date”) which is one hundred and fifty (150) calendar days following the Effective Date; by providing written notice to the other at any time on or after the Outside Date; provided however, that no Party may terminate this Agreement under this Section 11.01(d) if on the Outside Date all conditions to the obligations of Purchaser or Sellers at Closing set forth in ARTICLE IX and ARTICLE X, as applicable, have been satisfied; or
  - (ii) Notwithstanding Section 11.01(d)(i), if the Closing has not occurred on or before the Outside Date because a Governmental Approval or Church

Approval that must be received prior to the consummation of the Contemplated Transactions has not been received before or on the Outside Date, then such Outside Date shall be extended until thirty (30) calendar days following the date on which such Governmental Approval and Church Approval is obtained; provided, however, that either Party may terminate this Agreement in writing if such date is more than three hundred and fifty (350) calendar days after the Effective Date. Notwithstanding any of the foregoing of this Section 11.01(d), the right to terminate this Agreement under this Section 11.01(d) shall not be available to any Party whose material breach of this Agreement has been the cause of the failure of the Contemplated Transactions to have been consummated on or before the Outside Date without the mutual written consent of the other Parties.

(e) by Purchaser or Sellers if a Governmental Authority of competent jurisdiction, including but not limited to the California Attorney General, shall have issued a judgment or taken any other action (including without limitation withholding any legally required consent), in each case, which has become final and non-appealable and which enjoins or otherwise prohibits the Contemplated Transactions, subject to Section 11.01(d) above.

**Section 11.02. Termination Consequences.** If this Agreement is terminated pursuant to Section 11.01, this Agreement will thereupon become void and of no effect and all further obligations of the Parties under this Agreement shall terminate, except that the obligations set forth in this Section 11.02, Section 4.07, Section 8.02(l), Section 8.06, Section 14.07, Section 15.09, Section 15.11 and Section 15.13 and those other obligations which explicitly provide for survival in the event of termination pursuant to Section 11.01. The provisions of Section 4.07 and the Deposit Escrow Agreement shall govern the disposition of the Good Faith Deposit.

**Section 11.03. Survival.** The representations and warranties of the Parties contained in this Agreement or in any certificates or other writing delivered pursuant to this Agreement or in connection herewith will survive the Closing for 24 months thereafter provided that the representations contained in Section 5.01 (Sellers' authority), Section 5.02 (Binding Agreement), Section 5.06 (Title), Section 5.17 (Taxes), Section 6.01 (Purchaser's Authority), and Section 6.02 (Purchaser Binding Agreement) shall survive for the applicable statute of limitation. Notwithstanding the preceding sentence, any representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence if written notice of the inaccuracy or breach thereof giving rise to such right of indemnity has been given to the Party against whom such indemnification may be sought prior to such time. All covenants and agreements of the Parties contained in this Agreement will survive the Closing indefinitely.

## ARTICLE XII.

### TAX AND COST REPORT MATTERS

#### **Section 12.01.** Tax Matters; Allocation of Purchase Price.

(a) Cooperation on Tax Matters. The Parties shall cooperate fully with each other, as and to the extent reasonably requested by the other Party, in connection with any Tax matter related to the Transferred Assets or the operation of the Hospitals (including by the provision of reasonably relevant Records or information subject to the other terms and conditions of this Agreement applicable to such Records, including without limitation, Section 2.02(b), and Section 13.02). In the event that Purchaser requests such cooperation from Sellers, Purchaser will pay the reasonable out-of-pocket expenses incurred by Sellers pursuant to such request.

(b) As soon as reasonably practicable after the Closing Date, the Purchaser shall propose to Sellers the allocation of the purchase price (as determined for Tax purposes) among the Transferred Assets, which allocation shall be in accordance with Section 1060 of the Code, which shall be subject to Sellers' consent, which consent shall not be unreasonably withheld, qualified or delayed. Sellers and Purchaser hereby agree to be bound by such allocation, to account for and report the purchase and sale of the Transferred Assets contemplated hereby for Tax purposes consistent with such allocation, and not to take any action that is inconsistent with such allocation without the prior written consent of the other Party, provided that this shall not limit the Parties' ability to settle audits or other proceedings.

#### **Section 12.02.** Filing Cost Reports; Amounts Due To or From Third Party Payors; Cost Report Audits and Contests.

(a) Filing Procedures. After the Closing, Purchaser shall prepare and timely file, in a manner that complies with applicable Legal Requirements, all Cost Reports (including, without limitation, terminating cost reports) and all other filings which are required to be filed with Medicare, any other payors or any Governmental Authority with respect to the operations of the Business for any and all periods ending on or prior to the Closing Date. Prior to filing any such Cost Reports and other filings, Purchaser shall deliver a copy of each to DCHS. Upon the reasonable request and instruction of Purchaser, and at the reasonable cost of Purchaser, Sellers shall assist Purchaser in the preparation of such Cost Reports and other filings by providing the reasonable support of Purchaser's employees in obtaining financial information or data deemed by Sellers to be reasonably necessary for the preparation of such Sellers Cost Reports and other filings. Within a reasonable period of time after filing each such Cost Report and other filings (but in no event later than fifteen (15) Business Days following each such filing), Purchaser shall provide DCHS with a copy of such filed Cost Reports and other filings.

(b) Cost Report and Other Audits and Contests. After the Closing and for the period of time necessary to conclude any pending or potential audit, administrative or judicial appeal, or contest of any Cost Reports or reimbursement or payments made with respect to the Hospitals concerning periods ending on or before the Closing Date, Purchaser shall within five (5) business days of Purchaser's receipt of the same, forward to DCHS all information received from payors relating to periods prior to and as of the Closing Date, including, without limitation, any and all correspondence relating to the Cost Reports or rights to settlements and retroactive

adjustments on Cost Reports, notices of program reimbursement, proposed audit adjustments and the like. To the extent DCHS reasonably requires any information or data to respond to such correspondence and information, Purchaser shall provide, at Purchaser's cost, the reasonable and timely support of Purchaser's employees in obtaining such information or data. Upon the reasonable request of DCHS, and at Purchaser's cost, Purchaser shall assist DCHS in obtaining information deemed by DCHS to be necessary or convenient in connection with any audit, and administrative or judicial appeal or any contest of such matters.

## **ARTICLE XIII.**

### **POST-CLOSING MATTERS**

#### **Section 13.01. Retained Assets and Excluded Liabilities.**

(a) Subject to Section 12.02, any asset, liability, remittance, mail and other communication that is a Retained Asset or an Excluded Liability (i) pursuant to the terms of this Agreement; (ii) as otherwise determined by the Parties' mutual written agreement; or (iii) absent such agreement, as determined by adjudication by a court or similar tribunal, which comes into the possession, custody or control of Purchaser, shall within ten (10) Business Days following receipt of such be transferred, assigned or conveyed by Purchaser to Sellers at Purchaser's cost. Purchaser shall not have any right, title or interest in or obligation or responsibility with respect to such Retained Assets or Excluded Liabilities except that Purchaser shall hold such Retained Assets and Excluded Liabilities in trust for the benefit of Sellers. Purchaser shall have (i) the right to offset amounts payable to Sellers under this ARTICLE XIII against and (ii) the right to contest Purchaser's obligation to transfer, assign and convey to Sellers because of outstanding claims, liabilities or obligations asserted by Purchaser against Sellers in accordance with Article XIV. If Purchaser does not remit Retained Assets or Excluded Liabilities to Sellers in accordance with this Section 13.01(a), such Retained Assets and Excluded Liabilities shall bear interest at the prime rate as published in the *Wall Street Journal*, Eastern print edition in effect on the calendar day upon which such payment was required to be made to Sellers (the "Retained Asset Due Date") plus five percent (5%) (or the maximum rate allowed by law, whichever is more), such interest accruing on each calendar day after the Retained Asset Due Date until payment of the Retained Assets and the Excluded Liabilities and all interest thereon is made to Sellers..

(b) Subject to Section 12.02 hereof, any asset, liability, remittance, mail and other communication that is a Transferred Asset or an Assumed Liability (i) pursuant to the terms of this Agreement; (ii) as otherwise determined by the Parties' mutual written agreement; or (iii) absent such agreement, as determined by adjudication by a court or similar tribunal, which comes into or remains in the possession, custody or control of Sellers shall within ten (10) Business Days following receipt of such be transferred, assigned or conveyed by Sellers to Purchaser at Purchaser's reasonable cost. Sellers shall not have any right, title or interest in or obligation or responsibility with respect to such Transferred Assets or Assumed Liabilities except that Sellers shall hold such Transferred Assets and Assumed Liabilities in trust for the benefit of Purchaser. Sellers shall have neither the right to offset amounts payable to Purchaser under this ARTICLE XIII against, nor the right to contest their obligation to transfer, assign and convey to Purchaser because of, outstanding claims, liabilities or obligations asserted by Sellers against Purchaser. If Sellers do not remit Transferred Assets or Assumed Liabilities to Purchaser in accordance with the first sentence of this Section 13.01(b), such Transferred Assets and Assumed Liabilities shall

bear interest at the prime rate as published in the *Wall Street Journal*, Eastern print edition in effect on the calendar day upon which such payment was required to be made to Purchaser (the “Asset Due Date”) plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Asset Due Date until delivery of the Transferred Assets and Assumed Liabilities and all interest thereon is made to Purchaser.

**Section 13.02. Preservation and Access to Records After the Closing.**

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by applicable Legal Requirements, Purchaser shall keep and preserve all Transferred Records. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Hospitals, Purchaser will gain access to patient records and other information which are subject to Legal Requirements concerning confidentiality (“Privacy Laws”), which Privacy Laws include but are not limited to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 and as otherwise may be amended from time to time, as well as all implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services, as such regulations and guidance may be amended from time to time. Purchaser shall comply with and shall maintain the Transferred Records in accordance with Privacy Law, all other applicable Legal Requirements, and the requirements of all relevant insurance carriers.

(b) Purchaser shall give full cooperation to Sellers and Sellers’ insurance carriers in respect of the defense of claims by third parties against Sellers, including by making the Hired Employees available for interviews, depositions, hearings and trials and making all of Purchaser’s employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses.

(c) After the Closing, Sellers shall grant to Purchaser access to and permit Purchaser to make copies of any of the Retained Records in its possession as may be reasonably necessary for the receiving party (i) to provide patient care, or (ii) comply with any Legal Requirement, or (iii) for any lawful purpose including, without limitation, actions by Purchaser in performance of its respective obligations, or the exercise of its respective rights, under this Agreement. Any Retained Records delivered to or made available to any party shall be returned to Sellers when such use therefor has terminated.

(d) Access to Retained Records pursuant to Section 13.02(a) shall be, whenever reasonably possible, during normal business hours and with reasonable prior written notice of the time when such access shall be needed.

(e) To the maximum extent permitted by any Legal Requirement, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Retained Assets, promptly after receiving the request for such documents and prior to any disclosure of such documents, Purchaser shall notify the Sellers and shall provide the Sellers with the opportunity to object to, such request or demand.

(f) To the maximum extent permitted by any Legal Requirement, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Transferred Assets



or Assumed Liabilities, promptly after receiving the request for such documents and prior to any disclosure of such documents, Sellers shall notify Purchaser and shall provide Purchaser with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

**Section 13.03. Consents; Provision of Benefits of Certain Contracts.** Sellers and Purchaser shall each use reasonable efforts and cooperate in good faith (i) to obtain any additional consents, approvals, authorizations, accreditations, certifications, clearances and Licenses required to carry out the Contemplated Transactions (including, Governmental Approvals) or which Sellers and Purchaser agree to be necessary or appropriate and which have not been obtained as of the Closing Date; (ii) in the preparation of any document or other material which may be required by any Governmental Authority or accrediting or certifying bodies as a predicate to or result of the Contemplated Transactions; and (iii) to effectuate the assignment or provision of benefit of any additional Contracts or Leased Real Property to Purchaser that have not already been assigned as of the Closing Date in accordance with Section 7.02.

**Section 13.04. Closing of Financials.** In addition to Purchaser's obligations under Section 4.03, Section 4.06 and Section 4.07, Purchaser shall cause the individual acting as the chief financial officer of the Hospitals after the Closing Date (the "Post-Closing CFO") to complete the standardized closing of Sellers' financial records through the Closing Date including the closing of general ledger account reconciliations (collectively, the "Closing of Financials"). Purchaser shall cause the Post-Closing CFO to use his or her best efforts to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date.

**Section 13.05. DOCMSC Lease.** Concurrently with the Closing, Purchaser shall enter into a lease with DOCMSC pursuant to which Purchaser shall lease to DOCMSC the Seton Hall residences located at 262 S. Lake Street, Los Angeles, CA 90057 for five (5) years at a rate of \$1.00 per year (the "DOCMSC Lease").

**Section 13.06. Grant of Right of First Refusal.** If, ~~on or~~ at any time within five (5) years after the Closing Date, Purchaser desires to sell any [religious asset or religious object]<sup>16</sup> that is not otherwise a Retained Asset to another Person, Sellers shall have the right and option, but not the obligation, to purchase such religious asset or object for fair market value (each such right and option, a "Right of First Refusal"). As soon as practicable, after Purchaser obtains an offer to purchase, or desires to sell any [religious asset or religious object], then Purchaser shall provide Sellers with written notice of ~~the proposed~~ such proposed sale (the "Proposal Notice"). If Sellers wish to exercise the Right of First Refusal with respect to a particular religious asset or object reflected in the Proposal Notice, Sellers must provide Purchaser with written notice of such exercise no later than sixty (60) days following Purchaser's receipt of the Proposal Notice (the "Expiration Date"). In the event that Sellers do not exercise the Right of First Refusal prior to the Expiration Date, then Purchaser may sell or donate the religious asset or object to any other Person. If Sellers timely exercise their first right of refusal, they parties shall mutually agree upon the fair market value to be paid by Sellers for such object, or failing such agreement the fair market value shall be determined by an independent valuation consultant selected by Purchaser. Sellers shall purchase any object within ninety (90) days after exercising their first right hereunder with respect to such object.

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<sup>16</sup> Note to DCHS: This group of assets needs to be stated with greater specificity.

## ARTICLE XIV.

### INDEMNIFICATION

**Section 14.01. Indemnification by Sellers.** Sellers shall (subject to the limits in Section 14.02) indemnify, defend, and hold harmless Purchaser and its officers, members, directors, employees, and Affiliates (the “Purchaser Indemnified Parties”) against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys’ and consultants’ fees and expenses, but expressly excluding any attorneys’ and experts’ fees and expenses incurred with respect to determining whether or the extent to which a Damage is indemnifiable hereunder) (“Damages”), incurred or suffered as a result of, relating to or arising out of, (a) any breach of, or inaccuracy in, any representation or warranty made by Sellers in this Agreement or in any Ancillary Agreement, (b) any material breach of any covenant or agreement of Sellers in this Agreement or in any Ancillary Agreement, (c) the SRDP Matter, or (d) Excluded Liabilities.

**Section 14.02. Limitations.** Notwithstanding anything to the contrary contained herein,

(a) No claim for indemnification pursuant to Section 14.01 shall be made with respect to the SRDP Matter (“SDRP Claims”) unless and until the aggregate Damages incurred by the Purchaser Indemnified Parties for SRDP Claims exceed Five Million Dollars (\$5,000,000) in the aggregate (“SDRP Threshold”), at which point Sellers shall be liable for the Damages for SRDP Claims in excess of such amount; provided, however, the Sellers aggregate liability in respect of SRDP Claims will be limited to Ten Million Dollars (\$10,000,000~~;~~) above and beyond the SDRP Threshold; provided, further, the aggregate liability in respect of all claims for indemnification pursuant to Section 14.01 will be limited to an amount equal to the Holdback Amount (such amount, the “Cap”). For the avoidance of doubt, Sellers shall be responsible for indemnification for SRDP Claims for up to Ten Million Dollars (\$10,000,00)) above and beyond the SDRP Threshold, but not to the extent such amount exceeds the Cap.

(b) No claim for indemnification pursuant to Section 14.01 shall be made for any claim or claims other than SRDP Claims (“Non-SDRP Claims”) unless and until the aggregate Damages incurred by the Purchaser Indemnified Parties for Non-SDRP Claims exceed One Million ~~Five Hundred Thousand~~ Dollars (\$1,~~500,000~~,000) in the aggregate (“General Threshold”), at which point Sellers shall be liable for the total amount of such Damages for Non-SDRP Claims from the first dollar up to the Cap. The Damages amounts for SRDP Claims required to meet and exceed the SDRP Threshold are to be treated separate from, and will not be counted in reaching, the General Threshold.

(c) Notwithstanding any other provision of this Agreement, Sellers shall not be liable to Purchaser for any consequential, incidental, indirect, special or punitive damages whatsoever, including, without limitation, loss of profits or revenue, loss of use of equipment and facilities, diminished goodwill, and damage to, or replacement of other equipment or property, and losses indemnifiable hereunder to Purchaser shall not include such damage, except to the extent, if any, Purchaser is held liable for such damages to a third party and Purchaser is entitled to be indemnified by Sellers hereto pursuant to this ARTICLE XIV.

(d) Any liability for indemnification under this ARTICLE XIV shall be determined without duplication of recovery by reason of the set of facts giving rise to such

liability constituting a breach of more than one representation, warranty, covenant or undertaking, or one or more rights to indemnification. Without limiting the generality of the foregoing, Sellers shall be under no liability to indemnify Purchaser under Section 14.01 and no claim under Section 14.01 of this agreement shall:

(i) be made to the extent that any loss may be recovered under a policy of insurance in force on the date of loss; provided, however, that this subsection shall not apply to the extent that (a) coverage under the applicable policy of insurance is denied by the applicable insurance carrier (provided, further, that nothing hereunder shall require that Purchaser institute any formal legal proceeding against the applicable insurer prior to seeking indemnification from Sellers) or (b) any such loss is not fully covered by the applicable policy of insurance;

(ii) be made to the extent that such claim relates to a liability arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation of the Hospitals, or the use, ownership or operation of any of the Transferred Assets, on and after the Closing Date (without regard to whether such use, ownership or operation is consistent with Sellers' policies, procedures and/or practices prior to the Closing Date);

(iii) be made to the extent that such claim (or the basis therefor) is set forth in the disclosure schedule; or

(iv) be made to the extent that such claim would not have arisen but for a voluntary act, omission or transaction carried out by Purchaser or its Affiliates after the Closing Date.

(e) In the case of Actual Fraud by Sellers ~~solely~~ in connection with the Contemplated Transactions, the limitations on indemnification (including as to survival and amount) contained herein shall not apply to any claim for indemnification under this Article XIV by a Purchaser Indemnified Party.

**Section 14.03. Indemnification by Purchaser.** Purchaser will indemnify, defend, and hold harmless Sellers and their officers, members, directors, employees, controlling persons, representatives, agents, successors, assigns and Affiliates (the "Seller Indemnified Parties") from any and all losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) of every kind or character, known or unknown ("Seller Losses") that are asserted or alleged against each of the Seller Indemnified Parties arising out of events, contractual obligations, acts, or omissions of any Seller Indemnified Party that occurred in connection with the Assumed Liabilities, the ownership or operation of the Transferred Assets, the Business, or conduct of the Business on or involving the Real Property, the Transferred Assets and/or the Hospitals and other operations prior to the Closing Date and Purchaser shall be liable to third parties for and shall indemnify, defend and hold harmless the Seller Indemnified Parties from and against any and all Seller Losses arising out of events, contractual obligations, acts, or omission of any Seller Indemnified Party that occur in connection with the ownership or operation of the Transferred Assets, the Business, the conduct of Business on or involving the Real Property, the Transferred Assets and/or the Hospitals from and after the Closing Date, except for Seller Losses consisting of, or based upon, Excluded Liabilities and as otherwise expressly provided below in Section 14.04.

**Section 14.04. Limitations.** Notwithstanding anything to the contrary contained herein:

(a) [No claim for indemnification pursuant to Section 14.03 shall be made unless and until the aggregate Damages incurred by the Seller Indemnified Parties exceeds One Million Dollars (\$1,000,000) in the aggregate, at which point Purchaser shall be liable for the total amount of such Damages from the first dollar.]<sup>17</sup>

(b) Notwithstanding any other provision of this Agreement, Purchaser shall not be liable to Sellers for any consequential, incidental, indirect, special or punitive damages whatsoever, including, without limitation, loss of profits or revenue, loss of use of equipment and facilities, diminished goodwill, and damage to, or replacement of other equipment or property, and losses indemnifiable hereunder shall not include such damage, except to the extent, if any, one of the parties hereto is held liable for such damages to a third party and such party is entitled to be indemnified by any of the other parties hereto pursuant to this ARTICLE XIV

(c) Any liability for indemnification under this ARTICLE XIV (including under Section 14.03) shall be determined without duplication of recovery by reason of the set of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or undertaking, or one or more rights to indemnification.

(d) Without limiting the generality of the foregoing, Purchaser shall be under no liability to indemnify Seller Indemnified Parties under Section 14.03 and no claim under Section 14.03 of this agreement shall ÷

(e) be made to the extent that any loss is recovered under a policy of insurance in force on the date of loss; provided, however, that this subsection shall not apply to the extent that (a) coverage under the applicable policy of insurance is denied by the applicable insurance carrier (provided, further, that nothing hereunder shall require that Purchaser institute any formal legal proceeding against the applicable insurer prior to seeking indemnification from Sellers) or (b) any such loss is not fully covered by the applicable policy of insurance;

(f) In the case of Actual Fraud by Purchaser ~~solely~~ in connection with the Contemplated Transactions, the limitations on indemnification (including as to survival and amount) contained herein shall not apply to any claim for indemnification under this Article XIV by a Seller Indemnified Party.

**Section 14.05. Procedures.**

(a) Any party seeking indemnification under this ARTICLE XIV (an “Indemnified Party”) shall give each party from whom indemnification is being sought (each, an “Indemnifying Party”) notice of any matter that such Indemnified Party has determined has given rise to or could give rise to a right of indemnification under this Agreement, stating the amount of the Damages or Seller Losses, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations and liabilities of an Indemnifying Party under this ARTICLE XIV with respect to Damages or Seller Losses arising from claims of any third party that are

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<sup>17</sup> Note to DCHS: This remains under consideration by SGM.

subject to the indemnification provided for in this ARTICLE XIV (“Third Party Claims”) will be governed by and contingent upon the following additional terms and conditions:

(b) If any Indemnified Party receives notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice, provided that the failure to provide such notice will not release the Indemnifying Party from any of its obligations under this ARTICLE XIV except to the extent the Indemnifying Party is materially prejudiced by such failure. The Indemnifying Party will be entitled to participate in the defense of any Third Party Claim that is the subject of a notice given by or on behalf of any Indemnified Party pursuant to this Section 14.05(b). In addition, the Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party. The Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; provided, that the Indemnifying Party will pay the fees and expenses of separate counsel retained by the Indemnified Party that are incurred prior to the Indemnifying Party’s assumption of control of the defense of the Third Party Claim

(c) So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 14.05(b) above, (i) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably provided that the Indemnified Party is completely released from all claims) unless the judgment or proposed settlement involves only the payment of money damages by the Indemnifying Party and does not impose injunctive or other equitable relief upon the Indemnified Party, and (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

**Section 14.06. Escrow Funds.** Purchaser agrees that any and all amounts payable as a result of any claim by a Purchaser for indemnification under this ARTICLE XIV shall be paid out of the Holdback Amount established in accordance with the terms of this Agreement.

**Section 14.07. Exclusive Remedy.** Except (a) with respect to Actual Fraud and (b) for the remedies of injunctive relief or specific performance pursuant to Section 15.11, the indemnification provisions of this ARTICLE XIV shall be the Purchaser’s and Sellers’ sole and exclusive remedy from and after the Closing with respect to any and all claims of any kind whatsoever arising out of or relating to the subject matter of this Agreement (or its negotiation and execution). Each of the Parties hereto, on behalf of itself and its stockholders or members, officers, directors, managers, employees, partners and affiliates, agrees not to bring any actions or proceedings, at law, equity or otherwise, against any other Party or its stockholders or members, officers, directors, managers, employees, partners or affiliates, in respect of any breaches or alleged breaches of any representation, warranty or other provision of this Agreement or the transactions contemplated hereby, except pursuant to the express provisions of this ARTICLE XIV.

## **ARTICLE XV. MISCELLANEOUS**

**Section 15.01. Enforcement Expenses.** Except as otherwise provided in this Agreement, each Party will pay its own respective financial advisory, legal, accounting and other expenses incurred by it or for its benefit in connection with the preparation and execution of this Agreement and the Ancillary Agreements. Notwithstanding the foregoing, in the event of any action or proceeding for enforcement of any of the terms or conditions of this Agreement, any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Agreement or any action or proceeding in any way arising out of this Agreement, the prevailing party in such action, or the nondismissing party where the dismissal occurs other than by reason of a settlement, will be entitled to recover, from the non-prevailing party, its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, will be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal or judgment. The Parties shall cause any judgment or settlement of any such Action to specify the prevailing and non-prevailing Parties for such purposes. In the event of a decision in which neither party prevails in all regards, the parties' reasonable and documented costs and expenses shall be allocated in a manner reflecting the degree to which the decision in such proceeding falls between the parties' initial positions in the proceeding. At all times, DOCMSC shall have the authority to enforce DCHS' rights under this Agreement, including the post-Closing covenants of ARTICLE 8.

**Section 15.02. Notices.** Any notice, request, demand, claim or other communication required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered personally, delivered by nationally recognized overnight courier service, sent by certified or registered mail, postage prepaid, or (if a facsimile number is provided below) sent by facsimile (subject to electronic confirmation of good facsimile transmission). Any such notice, request, demand, claim or other communication shall be deemed to have been delivered and given (a) when delivered, if delivered personally; (b) the Business Day after it is deposited with such nationally recognized overnight courier service, if sent for overnight delivery by a nationally recognized overnight courier service; (c) the day of sending, if sent by facsimile prior to 5:00 p.m. (Pacific time) on any Business Day or the next succeeding Business Day if sent by facsimile after 5:00 p.m. (Pacific time) on any Business Day or on any day other than a Business Day; or (d) five Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or, if applicable, facsimile number, or to such other address or addresses or facsimile number or numbers as such Party may subsequently designate to the other Parties by notice given hereunder:

If to Sellers, to:

Daughters of Charity Health System  
26000 Altamont Road, Los Altos Hills, CA 94022-4317  
Telephone number: 650-917-4528  
Facsimile number: \_\_\_\_\_  
Attention: Robert Issai, Chief Executive Officer

with a copy (which shall not constitute notice) to:

Ropes & Gray LLP  
3 Embarcadero Center, Suite 300  
San Francisco, CA 94111  
Telephone number: 415-315-6394  
Facsimile number: 415-315-4801  
Attention: John O. Chesley, Partner

Daughters of Charity Health System  
26000 Altamont Road, Los Altos Hills, CA 94022-4317  
Telephone number: 650-917-4522  
Facsimile number: 650-941-6309  
Attention: Pascale Roy, General Counsel

If to Purchaser, to:

Strategic Global Management, Inc.  
6800 Indiana Ave, Suite 130  
Riverside, CA 92506  
Telephone number: 951-782-8812  
Facsimile number: 951-782-8850  
Attention: Chief Executive Officer

with a copy (which shall not constitute notice) to:

William Thomas  
6800 Indiana Ave, Suite 130  
Riverside, CA 92506  
Telephone number: 951-782-8812  
Facsimile number: 951-782-8850

Each of the Parties to this Agreement may specify a different address or addresses or facsimile number or facsimile numbers by giving notice in accordance with this Section 15.02 to each of the other Parties.

**Section 15.03. Succession and Assignment; No Third-Party Beneficiaries.** Subject to the immediately following sentence, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, each of which such successors and permitted assigns will be deemed to be a Party for all purposes hereof. Neither Party may assign, delegate or otherwise transfer either this Agreement or any of the Party's rights, interests or obligations hereunder without the prior written approval of the other Party, and any attempt to do so will be null and void ab initio. Notwithstanding the foregoing, Purchaser and Sellers may respectively assign this Agreement to an Affiliate without the other Party's consent and Purchaser may assign, or concurrent with closing resell, to parties other than its Affiliates, all rights in and to the Medical Office Buildings and Ancillary Businesses, provided, however, that no such assignment of this Agreement will relieve Purchaser of any of its obligations hereunder nor will any assignment by Sellers of any of their rights or responsibilities hereunder relieve Sellers of their obligations hereunder. Except as expressly provided herein, this Agreement is for the sole benefit of the Parties and their successors and permitted assignees and nothing herein expressed or

implied will give or be construed to give any Person, other than the Parties and such successors and permitted assignees, any other right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 15.04. Exhibits, Schedules and Disclosure Schedules.** The Disclosure Schedules and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein.

**Section 15.05. Amendments and Waivers.** No amendment or waiver of any provision of this Agreement will be valid and binding unless it is in writing and signed, in the case of an amendment, by Purchaser and Sellers, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by a Party of any breach or violation of, default under or inaccuracy in any representation, warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach or violation of, default under, or inaccuracy in, any such representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of a Party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof.

**Section 15.06. Entire Agreement.** This Agreement, together with the Ancillary Agreements, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings and agreements, whether written or oral, with respect thereto, except for the Confidentiality Agreement. There are no restrictions, promises, warranties, covenants, or undertakings, other than those expressly provided for in this Agreement and in the Ancillary Agreements. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations, warranties and agreements contained herein and no others.

**Section 15.07. Counterparts; Facsimile Signature.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed and delivered by each Party. Counterpart signature pages to this Agreement may be delivered by facsimile or electronic delivery (i.e., by email of a PDF signature page) and each such counterpart signature page will constitute an original for all purposes.

**Section 15.08. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each Party intends that such provision will be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements.

**Section 15.09. Governing Law; Jurisdiction.** This Agreement, the rights of the Parties hereunder and all Actions arising in whole or in part under or in connection herewith, will be governed by and construed and enforced in accordance with the laws of the State of California,



without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. The parties hereto agree that any action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Contemplated Transactions may only be brought in the United States District Court for the Northern District of California or any California State court sitting in the county of San Francisco, California, and each of the parties hereby consents to the exclusive jurisdiction of such courts in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, and each party agrees that, in addition to any method of service of process otherwise permitted by law, service of process on each party may be made by any method for giving such party notice as provided in Section 15.02 and shall be deemed effective service of process on such party.

**Section 15.10. Publicity.** No public announcement or disclosure (including, without limitation, any general announcement to employees, customers or suppliers or Sellers or Purchaser) will be made by any Party concerning this Agreement, the Ancillary Agreements, the Contemplated Transactions or the subject matter thereof without the prior written consent of each other Party; provided, that the provisions of this Section 15.10 shall not prohibit any disclosure (i) required by any Legal Requirements (in which case the disclosing Party will provide the other Parties with the opportunity to review and comment in advance of such disclosure) or (ii) made in connection with the enforcement of any right or remedy relating to this Agreement, the Ancillary Agreements or the Contemplated Transactions pursuant to Section 15.09.

**Section 15.11. Specific Performance.** Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties agrees that, without posting a bond or other undertaking, the other Parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which the other Parties may be entitled, at law or in equity. Each Party further agrees that, in the event of any Action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at law would be adequate.

**Section 15.12. Service of Process.** Each Party hereby (i) consents to service of process in any Action among any of the Parties relating to or arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement or the Contemplated Transactions in any manner permitted by California law; (ii) agrees that service of process made in accordance with clause (i) or made by registered or certified mail, return receipt requested, at its address specified pursuant to Section 15.02, will constitute good and valid service of process in any such Action; and (iii) waives and agrees not to assert (by way of motion, as a defense, or otherwise) in any such Action any claim that service of process made in accordance with clause (i) or (ii) does not constitute good and valid service of process

**Section 15.13. Attorney-Client Privilege; Waiver of Conflict.** Purchaser hereby waives and agrees to not assert, and from and after the Closing, Purchaser will cause DCHS Medical

Foundation and the Ancillary Businesses to waive and to not assert, any actual or potential conflict of interest arising out of or relating to the representation, after the Closing Date, of any of the Sellers and their respective Affiliates in any dispute with Purchaser, or its Affiliates, the DCHS Medical Foundation or the Ancillary Businesses, or any other matter arising out of or relating to this Agreement or the Contemplated Transaction (each, a “Post-Closing Representation”), by Prior Company Counsel in matters arising out of or relating to this Agreement or the Contemplated Transaction (each such matter, a “Pre-Closing Representation”). Purchaser further agrees, and from and after the Closing Purchaser will cause DCHS Medical Foundation and the Ancillary Businesses to agree, that all rights with respect to any attorney-client privilege (including the right to control such privilege), and all rights with respect to any expectation of client confidence, in each case with respect to any communication between any Prior Company Counsel, on the one hand, and any of the Sellers or any of their respective Affiliates or any of their respective officers, directors, employees, members or managers, on the other hand, that relates to any Pre-Closing Representation (any such communication, a “Seller Pre-Closing Communication”), shall belong solely to DCHS, and without limiting the generality of the preceding sentence, from and after the Closing none of Purchaser, or its respective Affiliates shall have access to any Seller Pre-Closing Communications or to the files of Prior Company Counsel relating to or arising out of any Pre-Closing Representation, and all books, records and other materials of Sellers or their respective Affiliates in any medium (including electronic copies) containing or reflecting any Seller Pre-Closing Communications or the work product of legal counsel with respect thereto, including any related summaries, drafts or analyses, any copies thereof in any medium, and all rights with respect to any of the foregoing (including all property rights), are hereby assigned and transferred to DCHS effective as of the Closing. From and after the Closing, to the extent any such material or information has not been delivered to DCHS pursuant to the preceding sentence Purchaser shall maintain the confidentiality thereof, all such material and information will be held for the benefit of DCHS and its Affiliates, and Purchaser and its Affiliates will deliver such material and information to DCHS promptly upon discovery thereof, without retaining copies thereof. From and after the Closing, none of Purchaser or its Affiliates shall access or in any way, directly or indirectly, use or rely upon any such material or information, Prior Company Counsel shall have no duty whatsoever to reveal or disclose to Purchaser or any of its Affiliates any Pre-Closing Seller Communications, or any such material or information, by reason of any attorney-client relationship between Prior Company Counsel and Sellers or any of their Affiliates or otherwise. Purchaser hereby acknowledges and confirms that it has had the opportunity to review and obtain adequate information regarding the significance and risks of the waivers and other terms and conditions of this Section 15.13, including the opportunity to discuss with counsel such matters and reasonable alternatives to such terms. This Section 15.13 is for the benefit of the Sellers and their respective Affiliates and each Prior Company Counsel, and each of them is an intended third party beneficiary of this Section 15.13. This Section 15.13 shall be irrevocable, and no term of this Section 15.13 may be amended, waived or modified, without the prior written consent of DCHS or its Affiliates and the Prior Company Counsel affected thereby.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals by their officers, all as of the date and year first above written.

**SELLERS:**

**[SELLERS]**

By:

By:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER:**

**Strategic Global Management, Inc.**

By:

By:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_